

**REQUEST FOR PROPOSALS**

**ARBITRAGE REBATE COMPLIANCE SERVICES**

**For the Energy Efficiency Master Trust Revenue  
Bonds Series 2003A**



RFP #400-03-402

[www.energy.ca.gov/contracts](http://www.energy.ca.gov/contracts)

State of California  
California Energy Commission

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# REQUEST FOR PROPOSALS

## Section I – Introduction

### **Background Summary**

The Energy Efficiency Master Trust Revenue Bonds Series 2003A (Bonds), were issued on April 10, 2003 for \$28,005,000. The Bonds are supported by repayments from 93 pledged loans from the Energy Conservation Assistance Program (ECA Program). The California Energy Commission (Commission) has successfully assisted local governments, hospitals, schools and colleges, and other public entities become more energy efficient through the ECA Program for over 20 years. Bonds enable the ECA Program to continue its successful energy efficiency loan program during the current budgetary period. One unique aspect of this bond is a 20% Debt Service Reserve Account. This account uses funds of non-bond origin, with its accumulated interest earnings used to support debt service requirements. Also all bond funds in all accounts are invested or reinvested in the State Surplus Money Investment fund.

On the date the Bonds were issued, the California Power Authority (CPA) and the Commission executed a Tax Certificate and Agreement (Tax Agreement), which set forth certain facts and circumstances underlying the issuance of the Bonds. Based in part on the representations in the Tax Agreement and in part on other investigation and analysis conducted preceding the issuance of the Bonds, the Commission's contracted Bond Counsel rendered an opinion on the date of issuance of the Bonds that, subject to certain conditions, limitations and assumptions, the interest on the Bonds is excluded from gross income for federal income tax purposes.

### **What is the Purpose of this RFP?**

This Request for Proposals (RFP) is to solicit and select an experienced arbitrage and rebate consulting firm (contractor) to provide complete and precise tax analysis of the Bond sub-accounts and any other related accounts of this revenue bond that affect tax liability of the Commission for arbitrage purposes. The contractor must include Certified Public Accountants licensed in the State of California, with specialization in government revenue bond tax work. The contractor will provide complete tax analysis, filings, opinions, and any other arbitrage rebate tasks as required for the Internal Revenue Service and required by the 2003A Tax Certificate and Agreement dated April 10, 2003. Interested bidders should review 2003A bond related documents online at [www.energy.ca.gov/contracts](http://www.energy.ca.gov/contracts). These include 1) the 2003A Official Statement, 2) 2003A Tax Certificate and Agreement, 3) Summary of 2003 A Accounts and 4) flow of funds, Other related Bond Documents are available at the Energy Commission's contract office.



## **Section I - Introduction**

### **How is this RFP Organized?**

This Request for Proposals is organized into the following sections:

- Section I - provides a summary and administrative overview of the RFP Requirements.
- Section II - provides administrative detail including legal requirements of the RFP.
- Section III - explains in detail the format, documents and technical expertise needed to submit a successful proposal.
- Section IV - explains the work to be accomplished, deliverables and due dates.
- Section V - explains the evaluation process.

### **How Much Funding is Available?**

There is a maximum total of up to \$20,000 available to fund the contract resulting from this RFP.

### **How Do I Respond To This RFP?**

Responses to this solicitation must be submitted in two parts consisting of 1) Volume 1, Section 1- Administrative Forms and Requirements, Section 2 – the Technical Proposal, and 2) Volume 2 – the Cost Proposal. The Technical Proposals must follow the format described in Section III. The Technical Proposal shall document the bidder's experience, qualifications, project organization and approach to perform the tasks described in the Scope of Work found in Section IV, and the Cost Proposal shall detail the Bidder's budget to perform such tasks using the budget format in Exhibit A of this RFP.

### **What Are The Key Activities and Dates?**

Key activities and times for this RFP are presented below:

<b>ACTIVITY</b>	<b>ACTION DATE</b>
RFP Release	November 4, 2003
Deadline for Written Questions	November 19, 2003
Distribute Questions/Answers and Addenda (if any) to RFP	December 2, 2003
Deadline to Submit Proposals	December 16, 2003
Interviews (if necessary)	December 29/30, 2003
Notice of Award	January 8, 2004
Commission Business Meeting	February 18, 2004
Contract Start Date	February 20, 2004
Contract End Date	April 30, 2006



## **Section I - Introduction**

### **What Are My Responsibilities for Submitting a Proposal?**

Bidders must take the responsibility to:

- Carefully read this entire RFP,
- Ask the appropriate questions in a timely manner,
- Submit all required responses in a complete manner by the required date and time,
- Make sure that all procedures and requirements of the RFP are followed and appropriately addressed,
- Carefully reread the entire RFP before submitting a proposal.



## Section II – Administrative Information

### About This Section

This section provides Bidders details in submitting a successful Proposal, including definitions of important terms, sources of information, submitting the proposal, confidential information, grounds for rejecting a proposal, and other administrative details.

### What Is An RFP?

The competitive method used for this procurement of services is a Request for Proposal (RFP). A Proposal submitted in response to this RFP will be scored based on the criteria in Section V. Every Technical Proposal must establish in writing the Bidder's ability to perform the RFP tasks listed in the Scope of Work. The Commission will contract with the Bidder who meets the minimum administrative and technical requirements and has the lowest final cost.

### How Are Key Words Defined?

Important definitions for this RFP are presented below:

WORD/TERM	DEFINITIONS
<b>Bidder</b>	Respondent to this RFP
<b>Commission</b>	California Energy Commission
<b>Contract</b>	The agreement signed by all parties and approved by Department of General Services if required. A contract is defined in the Public Contracts Code as an agreement or joint development agreement to provide labor, services, material, supplies, or equipment in the performance of a contract awarded for or on behalf of the State of California.
<b>Contract Budget</b>	The proposed Commission-reimbursable expenditures for that portion of the project covered by the contract period.
<b>Contract Term</b>	The time duration of the contract between the Commission and the Prime Contractor. All Commission reimbursed activities must occur during the contract term.
<b>DGS</b>	Department of General Services
<b>Contractor</b>	The firm that enters into the contract for specific tasks from the Commission as a result of this RFP and shall be referred to as the "Contractor" in this RFP. The Contractor has primary and legal responsibility for all of the work within the Scope of Work, is an expert in all of the management and administration areas, may be an expert in one or more of the task areas, and manages the work of the entire contract team.
<b>RFP</b>	Request for Proposals – this entire document.
<b>Proposal</b>	Formal written response to the Request for Proposals.



## Section II - Administration Information

<b>Subcontractor</b>	A firm or individual expert or consultant with financial/technical expertise to supplement the Contractor's expertise. The Contractor in conjunction with the subcontractor team is referred to as the contractor team. The Commission reserves the right to use some or all of the subcontractors belonging to the contractor team, and to remove, approve and/or designate additional subcontractors during the contract term.
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### **When Is The Deadline For Questions about the RFP?**

Potential Bidders may ask questions about the requirements of this RFP. Bidders must prepare their questions in writing and send, FAX, or e-mail them to the Contact Officer. Questions will be answered in writing and distributed to all parties who requested the RFP and posted on the Commissions Web Site at [www.energy.ca.gov/contracts](http://www.energy.ca.gov/contracts) **The deadline for written questions is November 19, 2003.**

### **When Is The Deadline For Submitting Proposals?**

All copies of your proposal must be delivered to the Commission Contract Office by December 16, 2003.

**NOTE:** The Commission will **not** accept late proposals (delivered after 5:00 P.M.). There are no exceptions.

### **How Do I Deliver My Proposal?**

A Bidder may deliver a proposal by:

- U.S. Mail,
- in person, or
- messenger service.

All proposals must be **delivered** to the Commission's Contract Office by **5:00 P.M. on December 16, 2003**. If a Bidder chooses either of the last two methods, delivery of all copies prior to 5:00 P.M. on December 16, 2003, must be made during normal business hours of 8:00 A.M. – 5:00 P.M., Monday through Friday. E-mail and facsimile (FAX) transmissions **WILL NOT** be accepted in whole or in part under any circumstances.

### **Where Do I Deliver My Proposal?**

California Energy Commission  
1516 Ninth Street  
Contracts Office, MS-18  
Sacramento, CA 95814

### **How Many Copies Do I Submit?**

Each Bidder must mail or deliver an original proposal and **six (6) copies** to the address given in Section I, "Whom Do I Contact?" The Bidder must submit the original and copies in a sealed envelope labeled "Proposal for Arbitrage and Rebate Compliance Services for the Energy Efficiency Master Trust Revenue bonds Series 2003A, RFP # 400-03-402".



## **Section II - Administration Information**

### **Whom Do I Contact?**

This RFP is available through the Commission's Web Site at <http://www.energy.ca.gov/contracts/index.html>. Questions or clarifications about this RFP should be directed to:

PEG A. PIGEON, Contract Officer  
California Energy Commission  
1516 Ninth Street, MS-18  
Sacramento, CA 95814  
Telephone: (916) 654-7093      FAX: (916) 654-4423  
[ppigeon@energy.state.ca.us](mailto:ppigeon@energy.state.ca.us)

Potential Bidders may ask questions about the requirements of this RFP. Bidders must prepare their questions in writing and send, FAX, or e-mail them to the Contact Officer. All questions will be answered in writing and will be distributed to all parties who requested this RFP and posted on the Commission's Web Site at [www.energy.ca.gov](http://www.energy.ca.gov). The deadline for written questions is November 19, 2003, by 5:00 p.m.

### **Verbal Communication**

Any verbal communication with a Commission employee concerning this RFP is not binding on the State and shall in no way alter a specification, term, or condition of the RFP. Therefore, all communication should be directed to the Commission's Contract Officer assigned to the RFP.

### **Are There Important Administrative Details I should Know?**

#### **Americans with Disabilities Act**

The successful Bidder, by signing the final contract, certifies compliance with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.) which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

#### **Bidder's Admonishment**

This RFP contains the instructions governing the requirements for a firm quotation to be submitted by interested Bidders, the format in which the proposal information is to be submitted, the material to be included, the requirements which must be met to be eligible for consideration, and Bidder responsibilities.

#### **Bidder's Cost**

The Bidder is responsible for the cost of developing a proposal and this cost cannot be charged to the State.

#### **Confidential Information**

No confidential information is allowed to be submitted in your proposal. Any proposal that contains confidential information will be rejected and immediately returned to the Bidder.

#### **Drug-Free Workplace**

The successful Bidder, by signing the final contract, certifies compliance with California Government Code Section 8350 et seq., which relates to providing a drug-free workplace.



## **Section II - Administration Information**

### Nondiscrimination Certification

Nondiscrimination Certification – Any bid, proposal, or offer for a contract which is submitted by a Prime Contractor who has been decertified from contracting with the State by the Department of Fair Employment and Housing (DFEH), shall be deemed to be non-responsive. Refer to the California Notice Register for a list of decertified contractors. (Published by the Office of Administrative Law and available through the Office of State Printing).

### Recycle Paper and Products

The successful Bidder shall certify in writing the minimum, if not exact, percentage of recycled content of paper used in the performance of the contract, regardless of whether the product meets the required recycled product percentage defined in Public Contract Code Sections 12161 and 12200. The successful Bidder may certify that the product contains zero recycled content. (PCC § 10308.5).

### Small Business Preference

Government code Section 14835, et seq., requires that a five percent (5%) cost preference be given to any bidder who is certified by the State of California as a small business for the purpose of evaluating cost bids. A Bidder who claims this preference may include a copy of its approved certification form in the Bidder's proposal.

### Disabled Veterans Business Enterprise (DVBE)

DVBE requirements have been waived by the Commission for this RFP.

### Statement of Compliance

All employers who are or wish to become, contractors with the State must develop and implement a nondiscrimination program as defined in Title 2, CCR Section 8104; unless specifically exempted pursuant to Title 2, CCR Section 8115, which includes contracts under \$5,000 and contracts with licensed rehabilitation workshops. See Government Code Section 12900 et seq, and Title 2, CCR Section 8103.

### **Can The Commission Cancel This RFP?**

Yes, if it is in the State's best interests, the Commission reserves the right to do any of the following:

- Cancel this RFP,
- Amend this RFP as needed, or
- Reject any or all proposals received in response to this RFP

### **Can The Commission Amend This RFP?**

If the RFP must be amended, the Commission will mail a formal written addendum to all parties who requested the RFP and also post it on the Commission's Web Site:

[www.energy.ca.gov/contracts](http://www.energy.ca.gov/contracts) and Department of General Services' Web Site:  
[www.dgs.ca.gov/cscr](http://www.dgs.ca.gov/cscr).

### **What If I Decide to Modify Or Withdraw My Proposal?**

#### Withdrawal/Modification

A Bidder may, by letter to the Contact Person, withdraw or modify a submitted proposal before 5:00 P.M. on December 16, 2003. Proposals cannot be changed after that date and time.



## **Section II - Administration Information**

### Immaterial Defect

The Commission may waive any immaterial defect or deviation contained in a Bidder's proposal. The Commission's waiver shall in no way modify the proposal or excuse the successful Bidder from full compliance.

### **On What Grounds Would My Proposal Be Rejected?**

A proposal shall be rejected if:

- It is received after the exact time and date set for receipt of proposals.
- It is lacking a properly executed Certification Clause(s), Attachment 3.
- It contains false or intentionally misleading statements or references which do not support an attribute or condition contended by the Bidder.
- If the proposal is intended to erroneously and fallaciously mislead the State in its evaluation of the proposal and the attribute, condition, or capability is a requirement of this RFP.
- There is a conflict of interest as contained in Public Contract Code Sections 10410, 10411, or any other conflict of interest law or eligibility conflict interest rules in this RFP.
- It contains confidential information.

A proposal may be rejected if:

- It is not prepared in the mandatory format described.
- It is unsigned.
- It does not literally comply or contains caveats that conflict with the RFP and the variation or deviation is not material, or it is otherwise non-responsive.

### **Are There Important Selection Process Steps?**

#### Interviews

Interviews may be conducted during the Evaluation Process for this RFP. Interview dates are tentatively set for December 29/30, 2003.

### **How Do I Know If I've Been Awarded A Contract?**

#### Notice of Award

On January 8, 2004, a "Notice of Award" will be mailed to the successful Bidder. It will also be posted in the Commission's Contracts Office and posted on the Commission's web site.

### **What Happens To My Documents?**

On the submission date, all proposals and related material submitted in response to this RFP become the property of the State. After the Notice of Award is posted, all proposals and related materials become public records.

### **What Are The Contract Requirements?**

#### Term of the Contract

The contract will be effective from February 20, 2004 through April 30, 2006.



## **Section II - Administration Information**

### RFP in Final Contract

The content of this RFP will be incorporated by reference into the final contract.

### Contract Cancellation

The Commission reserves the right to terminate any contract awarded through this RFP by providing a 30-day notice to the successful Bidder.

### Contract Amendment

The contract executed as a result of this RFP will be able to be awarded by mutual consent of the State and Contractor. The contract may require amendment as a result of project review, changes and additions, changes in project scope, or availability of funding.

### No Contract Until Signed & Approved

No agreement between the Commission and the successful Bidder is in effect until the contract, signed by the Contractor, has been approved at a Commission Business Meeting and, if over \$75,000, approved by the Department of General Services, Legal Services.

### Audit

The Bureau of State Audits may audit a contract awarded under this RFP for a period of three years after the final payment or termination of the contract.

### Errors

If a Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the Bidder shall immediately notify the Commission of such error in writing and request modification or clarification of the document. Clarifications will be given by written notice of all parties who requested the RFP, without divulging the source of the request for clarification. The Commission shall not be responsible for failure to correct errors.



## **Section III - Proposal Format and Required Documents**

### **About This Section**

This section provides Bidders with information about how to prepare a Proposal in response to this RFP. Bidders must follow all proposal format instructions, answer all questions, and supply all requested data. The Commission may reject any proposal that fails to comply with the items presented in this section.

### **Bidder's Responsibility**

It is the Bidder's responsibility to review Grounds for Rejection, Section II.

### **What Is The Required Format?**

The following topics constitute the **mandatory order of presentation for a proposal**. Provide one original and six (6) copies. Two-sided copying is preferred:

### **Volume 1 - Administrative and Technical Response**

#### **Section 1 - Administrative Response (Forms and Requirements)**

1. Cover Letter
2. Table of Contents
3. Required Documents and Statements
  - Contractor Status Form - Attachment 1
  - Small Business Certification (if applicable, see Attachment 2, Small Business Information)
  - Signed Certification Clauses - Attachment 3
  - Target Area Contract Preference Act (TACPA) Request (if applicable) - Attachment 6
  - Local Agency Military Base Recovery Area (LAMBRA) Preference Request (if applicable) - Attachment 7
  - Enterprise Zone Act (EZA) Preference Request (if applicable)-Attachment 8

#### **Section 2 - Technical Response**

1. Qualifications Summary
2. Approach to Tasks in Scope of Work - Section IV
3. Minimum Qualifications
4. Firm Organization Structure
5. Firm's Relevant Experience and Qualifications
6. Customer References - Attachment 4
7. Examples of Prior Work

### **Volume 2 - Cost Proposal**

The RFP response shall state the Bidder's costs for carrying out the project as outlined during the period of the contract. The costs must be displayed utilizing a cost cover letter on the organization's letterhead.

Bidders will provide the total cost of the project with a breakdown showing how the cost was determined. The detail must be based on the Bidder's proposed workplan and RFP deliverables.



## **Section III - - Proposal Format and Required Documents**

### **VOLUME 1 - ADMINISTRATIVE AND TECHNICAL RESPONSE FORMAT**

#### **Section 1 - Administrative Response Format**

##### **Cover Letter**

Each Bidder shall submit a cover letter on company letterhead that includes:

1. A reference to: "REQUEST FOR PROPOSAL, No. 400-03-402".
2. Summary of the Bidder's ability to perform the services described in the Scope of Work.
3. Statement that the Bidder is willing to perform those services and enter into a contract with the State.

The cover letter must be signed by a person having the authority to commit the Bidder to contract.

##### **Table of Contents**

Each proposal must include a Table of Contents, organized in the order cited above and with corresponding page numbers.

##### **Required Documents and Statements**

Every Bidder must complete and include the following forms with their proposal:

1. Contractor Status Form, Attachment 1
2. Certification Clauses, Attachment 3.

#### **Section 2 - Technical Response Format**

##### **Qualifications Summary**

Summarize the Contractor's overall approach in completing the tasks outlined in the Scope of Work, highlighting any outstanding features and qualifications.

##### **Approach To Tasks In Scope of Work**

Describe the Contractor's approach to providing services listed in the Scope of Work, Section IV, highlighting outstanding features, qualifications, and experience, including arbitrage rebate of revenue bonds.

##### **Minimum Qualifications**

1. The firm must have an office in California.
2. The firm must have provided arbitrage rebate compliance services for at least two tax-exempt State Revolving Fund debt financings or two complex multiple participant loan programs since January 1, 2000.

##### **Firm's Organization and Structure**

1. Provide a brief description of your firm, its organizational structure, including the location(s) of the office(s) from which the primary work on this contract is to be performed. Describe the staffing levels of your operations and any major changes in the previous two years.
2. Describe professional awards and headquarters of the firm. Include type of organization, composition, and functions to be performed by staff members of the firm and how the staff pertains to this contract.



## **Section III - - Proposal Format and Required Documents**

3. Identify and list all of the firm's staff who will be committed to the tasks and describe their roles.
4. Identify a primary contact person. This person should attend the interview session.

### **Firm's Relevant Experience and Qualifications**

1. Describe the firm's experience in providing arbitrage compliance services for Revenue Bond programs and /or other types of complex multiple participant government loan programs. Describe the team's experience in reviewing the revenue bond structure and accounts for arbitrage rebate analysis and tax related filings.
2. Provide a brief explanation of circumstances requiring methodological discretion and your recommended approach to addressing such circumstances.
3. Describe job classification, relevant experience, education, academic degrees and professional licenses of these technical staff team members.

### **Customer References**

Each Bidder shall complete a Customer Reference Form, Attachment 4, including complete contact information for your references. Three customer references are required for the Contractor during the previous 3 (three) years for arbitrage rebate compliance services.

### **Examples of Prior Work**

Each Bidder shall provide a minimum of two examples of revenue bond arbitrage rebate analysis as a work product completed within the previous two years.

## **VOLUME 2 – COST PROPOSAL**

### **Cost Summary Letter**

The RFP response shall state the bidder's costs for carrying out the project as outlined during the period of the contract. The costs must be displayed using a cost cover letter on the organization's letterhead.



## Section IV - Scope of Work

### **About This Section**

In this section, the Commission describes the tasks the Prime Contractor (referred to as “Contractor” in the Scope of Work) will be asked to perform under the direction of the Commission Contract Manager. This section also describes the work assignment process, deliverables, and due dates.

### **Primary Tasks**

<b>Tasks</b>	<b>Description of Task</b>	<b>Deliverables</b>	<b>Due Dates</b>
1	Review and Analyze Revenue Bond Structure and Accounts	Bond Account Report	1/15/04, 05, 06
2	Draft Arbitrage Rebate Analysis and Recommendations	Recommendation's Report	2/1/04, 05, 06
3	Prepare Required Tax Documents for Filing	Tax Documents	2/28/04, 05, 06
4	Draft Arbitrage Rebate Project Summary	Summary Report	3/15/04, 05, 06
5	Consultation Services	Meeting and Memorandum	As needed

### **Scope of Work**

The selected firm is expected to provide arbitrage rebate consulting services for a period of three years and will be responsible for assisting the Commission in completing tasks which may include, but are not limited to, the following:

#### **Task 1 – Review and Analyze Revenue Bond Structure and Accounts**

Contractor will review the Revenue Bond Structure from the documents provided and the accounts and sub-accounts that have been established.

Contractor will determine those arbitrage rebate requirements contained in the Internal Revenue Code and Treasury Regulations promulgated thereunder (collectively, the “Arbitrage Requirements”) that the Bonds are subject to and consult with CPA and/or the Commission on approaches to compliance.

Contractor will verify applicable bond yield for the Bonds.

Contractor will identify, and separately account for, all “Gross Proceeds” (as that term is defined in the Arbitrage Requirement) allocable to the Bond issue.

Contractor will calculate the 2003A Bonds’ excess investment earnings (cumulative arbitrage liability) in (7) bond accounts (Loan Repayment Account, Debt Service Account, Surplus Repayment Account, Debt Service Reserve Account [if applicable], Program Loan Account and Master Reserve Account and Master Rebate Accounts) and identify and quantify any other



## **Section IV - Scope of Work**

sources of investment earnings that might be applicable to the analysis. The Master Reserve Account and Master Rebate Accounts contain zero balance in the 2003A Bond Issue but may contain funds in subsequent bond issues.

Contractor will prepare a Bond Account Report and submit it to the Contract Manager for approval.

Deliverable: Bond Account Report

Due Date: 1/15/04, 05, and 06

### **Task 2 – Draft Arbitrage Rebate Analysis and Recommendations**

Contractor will prepare and deliver the appropriate documentation required to support calculations to the Commission and other necessary parties;

Contractor will prepare and provide a Recommendation's Report identifying the methodology employed, major assumptions, conclusions, and any recommendations for changes in Commission record keeping;

Contractor will participate in any telephone conference call the Contract Manager deems necessary regarding any questions or clarifications requested.

Deliverable: Recommendation's Report

Due Date: 2/1/04, 05, and 06

### **Task 3 – Prepare Required Arbitrage Rebate Documents**

Contractor will prepare official Internal Revenue Service (IRS) Tax Documents for signature by the Energy Commission's Executive Director. Contractor will submit the Tax Documents to the Contract Manager for approval.

Deliverable: Tax Documents

Due Date: 2/28/04, 05, and 06

### **Task 4 – Draft Arbitrage Rebate Project Report**

Contractor will prepare and provide a Summary Report of the analysis, findings, and documents filed for this revenue bond issue. Contractor will provide recommendations where necessary. Contractor will submit the Summary Report to the Contract Manager for approval.

Deliverable: Summary Report

Due Date: 3/15/04, 05, and 06

### **Task 5 – Provide Consultation Services**

Contractor will meet with the Contract Manager to provide assistance and consultation as necessary regarding retention of records, and other arbitrage issues as required.

Contractor will assist the Commission as necessary in the event of an IRS inquiry.



## Section IV - Scope of Work

Contractor will submit a memorandum to the Contract Manager advising that arbitrage calculation results are consistent with the Arbitrage Requirements or an explanation as to why such opinion is unnecessary.

Deliverable: Meeting and Memorandum  
Due Date: As Needed 2004, 05 and 06

### **Miscellaneous Administrative Services**

The Contractor will prepare and submit the following to the Contract Manager:

Invoice. The Contractor will prepare an invoice for all contract expenses performed. An advance copy of the invoice shall be sent to the Contract Manager to insure that all records are included and the invoice is for authorized work. The official invoice is to be submitted to the Commission's Accounting Office. The Contract Manager will specify the invoice format.

Program Meetings and Briefings. At the request of the Contract Manager, the Contractor shall be available for meetings. The cost of meetings requested specifically by the Contractor will be borne solely by the Contractor. The Commission expects to hold no more than one (1) program briefing meeting per tax year.



## **Section V. - Qualifications Evaluation**

### **What Are The Evaluation Stages?**

To analyze all proposals, the Commission will organize a committee whose members have expertise in evaluation of consulting services. The Committee will analyze the proposals in three stages.

#### **Stage One: Fulfillment of RFP Mandatory Format**

The Contracts Office will first identify those Bidders whose proposals adhere to the mandatory format outlined in Section III. Bidders who do not follow the mandatory format may be eliminated from the competition.

#### **Stage Two: Evaluation of Qualifications**

The Evaluation Committee will then review and score all remaining proposals based on the Evaluation Criteria in Section V. The preliminary final score for each RFP reflects the average of the combined scores of all Evaluation Committee members. After the review, the Evaluation Committee will identify the top three Bidders and may schedule interviews.

#### **Stage Three: Interviews**

The Evaluation Committee may conduct interviews with Bidders and use patterned questions. The Evaluation Committee may provide the top three Bidders with a copy of the questions to be addressed and a format for the structured interviews. Bidder responses to the questions will be scored based on the criteria in Section V. Upon completion of the interviews, the Evaluation Committee may make adjustments to the scores and re-rank the top competitors.

#### **Stage Four: Cost Proposals**

The Evaluation Committee will then open the cost proposals. The Small Business Preference will be applied, if applicable. The contract will be awarded to the Bidder who has the lowest cost.

### **Do Small Businesses Receive Extra Points?**

Yes. Each Bidder who is a State certified small business will receive a cost preference of five percent of the lowest cost or price offered by the lowest responsible Bidder who is not a certified small business, by deducting this five percent from the small business Bidder's cost, for the purpose of comparing cost proposals of all Bidders.



## Section V - Qualifications Evaluation

### How Will My Proposal Be Scored?

The Evaluation Committee will award points for the technical criteria based on the following considerations.

#### Point Scale

<b>Fail</b>	0-1 Points	<ul style="list-style-type: none"><li>✓ The response is not in substantial accord with the RFP requirements.</li><li>✓ Has a potential significant effect on the amount paid or net cost to the State or the quality or quantity of the product and/or service.</li><li>✓ Provides an advantage to one competitor over the other competitors. For example, not paying minimum wages.</li></ul>
<b>Minimally Acceptable</b>	2-4 Points	<ul style="list-style-type: none"><li>✓ The proposal states a requirement, but offers no explanation of how or what will be accomplished.</li><li>✓ Proposal does not completely respond to the criteria. Information presented does not provide a good understanding of Bidder's intent, does not give detailed information requested by the RFP, or does not adequately support the proposal.</li><li>✓ The response contains a technical deficiency which is an inaccurate statement or reference concerning the how, what, where, or when, which is part of an overall statement or description.</li></ul>
<b>Meets Minimum Requirements</b>	5-6 Points	<ul style="list-style-type: none"><li>✓ Satisfies the minimum requirements and describes generally how and/or what will be accomplished.</li><li>✓ Provides an average understanding of the Bidder's response to the RFP.</li></ul>
<b>Exceeds Minimum Requirements</b>	7-8 Points	<ul style="list-style-type: none"><li>✓ Response satisfies the minimum requirements and specifically describes how and/or what will be accomplished in an exemplary manner, using sample products and illustrative materials (i.e. diagrams, charts, graphs, etc.).</li><li>✓ A response which gives a clear and detailed understanding of the Bidder's intent. Response presents a persuasive argument supporting the proposal.</li></ul>
<b>Exceptional</b>	9-10 Points	<ul style="list-style-type: none"><li>✓ Exceeds the minimum requirements and specifically describes how and/or what will be accomplished in a superior manner, both quantitatively and qualitatively, using sample products and illustrative materials (i.e., diagrams, charts, graphs, etc.).</li><li>✓ Outstanding response with clear, detailed and relevant information exceeding the information requested. Response presents a compelling argument supporting the proposal.</li></ul>



## Section V - Qualifications Evaluation

### Evaluation Criteria and Points

The Evaluation Committee will review and evaluate the Proposals and interviews based on the following Evaluation Criteria.

<b>1. APPROACH TO TASKS IN SCOPE OF WORK</b> <i>(Maximum points 40)</i>			
<b>(a) General Approach</b>	<b>Weight</b>	<b>Max. Points</b>	<b>Point Total</b>
Response to work statement: <ul style="list-style-type: none"> <li>✓ Completeness and thoroughness of the Work Plan (addresses all of the tasks defined).</li> <li>✓ Demonstrated experience with similar work statement tasks.</li> <li>✓ Clarity and organization of proposal.</li> </ul>	<b>1</b>	<b>10</b>	<b>10</b>
<b>(b). Task 1 – 5 Review, Analysis, Document Preparation, Reporting and Consultation Services</b>	<b>Weight</b>	<b>Max. Points</b>	<b>Point Total</b>
Relevance and quality of response demonstrating knowledge and understanding of arbitrage rebate compliance services needed.	<b>3</b>	<b>10</b>	<b>30</b>
<b>2. CONTRACTOR'S QUALIFICATIONS &amp; EXPERIENCE</b> <i>(Maximum points 50)</i>	<b>Weight</b>	<b>Max. Points</b>	<b>Point Total</b>
a) The soundness of the organizational structure and responsibilities assigned (including organization chart with member names, and responsibilities).	<b>1</b>	<b>10</b>	<b>10</b>
b) Ability to provide quality services for all tasks.			
c) The experience and qualifications of the firm's team members. <ul style="list-style-type: none"> <li>• Qualifications of assigned personnel</li> <li>• Experience of assigned personnel</li> <li>• Availability of assigned personnel</li> <li>• Education of assigned personnel</li> </ul>	<b>4</b>	<b>10</b>	<b>40</b>
<b>3. REFERENCES</b> <i>(maximum points 30)</i>	<b>Weight</b>	<b>Max. Points</b>	<b>Point Total</b>
<ul style="list-style-type: none"> <li>✓ Relevance of references to the Scope of Work tasks</li> <li>✓ Validation of experience and performance as reflected in client reference questions</li> </ul>	<b>3</b>	<b>10</b>	<b>30</b>
<b>4. EXAMPLES OF PRIOR WORK</b> <i>(maximum points 30)</i>	<b>Weight</b>	<b>Max. Points</b>	<b>Point Total</b>
<ul style="list-style-type: none"> <li>✓ Depth and quality of work examples</li> </ul>	<b>3</b>	<b>10</b>	<b>30</b>
Evaluation of Written Proposal <i>(Maximum Points)</i>			<b>150</b>
<b>Evaluators Subtotal</b>			
<b>Passing Score (70% of 150)</b>			
<b>Evaluation of Oral Interview <i>(Maximum Points)</i></b> <i>(Interview evaluation for three top ranked bidders only)</i>			<b>50</b>
<b>OVERALL TOTAL SCORE</b>			<b>200</b>



# Table of Contents

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## **Exhibits**

- A. Sample Budget Format

## **Attachments**

- 1 Contractor Status Form
- 2 Small Business Information (DVBE REQUIREMENTS FOR THIS RFP HAVE BEEN WAIVED)
- 3 Contractor Certification Clauses
- 4 Customer References
- 5 Standard Agreement (Std. 213) with General Terms and Conditions
- 6 Target Area Contract Preference Act (TACPA) Request
- 7 Local Agency Military Base Recovery Area (LAMBRA) Preference Request
- 8 Enterprise Zone Act (EZA) Preference Request



**EXHIBIT A****Sample Budget Format**

FY 03/04 Task #	Personnel	Title	Total Loaded Hourly Wage	# Hours	Total Amount
1					
2					
3					
4					
5					
Sub-Total					
Indirect Costs: Travel, Equipment, Materials					
<b>TOTAL</b>					

FY 04/05 Task #	Personnel	Title	Total Loaded Hourly Wage	# Hours	Total Amount
1					
2					
3					
4					
5					
Sub-Total					
Indirect Costs: Travel, Equipment, Materials					
<b>TOTAL</b>					

FY 05/06 Task #	Personnel	Title	Total Loaded Hourly Wage	# Hours	Total Amount
1					
2					
3					
4					
5					
Sub-Total					
Indirect Costs: Travel, Equipment, Materials					
<b>TOTAL</b>					
<b>TOTAL BID</b>					



# ATTACHMENT 1

STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION  
Contracts Office

## CONTRACTOR STATUS FORM

Rev 3/03

Contractor's Name \_\_\_\_\_

County \_\_\_\_\_

Address \_\_\_\_\_

Federal Employer ID

# \_\_\_\_\_

Phone

# \_\_\_\_\_

### STATUS OF CONTRACTOR PROPOSING TO DO BUSINESS:

FAX

# \_\_\_\_\_

- ☐ Individual (Sole Proprietor)    ☐ Limited Partnership    ☐ General Partnership  
☐ Corporation    ☐ Limited Liability    ☐ Other

### INDIVIDUAL

If a sole proprietorship, state the true name of sole proprietor: \_\_\_\_\_

### PARTNERSHIP

If a partnership, list each partner, including limited partners, stating their true name and their interest in the partnership: \_\_\_\_\_

### CORPORATION

If a corporation, place and date of incorporation: \_\_\_\_\_

Date corporation was authorized by Sect. of State: \_\_\_\_\_

President: \_\_\_\_\_ Vice President: \_\_\_\_\_

Secretary: \_\_\_\_\_ Treasurer: \_\_\_\_\_

Agent for service of process and address if different from above: \_\_\_\_\_

### LIMITED LIABILITY COMPANY

If a Limited Liability Company, date LLC was authorized by the Secretary of State: \_\_\_\_\_

Name(s) of manager(s) \_\_\_\_\_

Agent for service of process and address if different from above: \_\_\_\_\_

### SMALL BUSINESS PREFERENCE

- Are you claiming preference as a small business? ☐ YES – Attach approval letter from Office of Small and Minority Business.  
☐ NO

Date you filed for small business preference: \_\_\_\_\_ Your small business ID number: \_\_\_\_\_

### OTHER

Explain: \_\_\_\_\_

\_\_\_\_\_

NOTE: This form must be completed or your proposal may be rejected.



## ATTACHMENT 2

### SMALL BUSINESS INFORMATION

For Proposal response assistance, please contact the contracting official below:

Peg A. Pigeon  
California Energy Commission  
1516 9<sup>th</sup> Street, MS-18  
Sacramento, CA 95814  
(916) 654 7093  
(916) 654-4423 (fax)  
[ppigeon@energy.state.ca.us](mailto:ppigeon@energy.state.ca.us)

The Office of Small Business and DVBE Certification (OSDC) offers program information and may be reached at:

Department of General Services  
Office of Small Business and DVBE Certification  
707 3<sup>rd</sup> Street, 1<sup>st</sup> Floor, Room 400  
West Sacramento, CA 95605  
Homepage: <http://www.dgs.ca.gov/osbcr>  
Receptionist: (916) 375-4940 or (800) 559-5529  
24-Hour Recording and Mail Request, call (916) 322-5060  
Fax: (916) 375-4050

#### Small Business Certification

In order to receive Small Business Preference, Bidder must either be certified by the OSDC as a small business, or be self-certified pursuant to the Federal Government.



## **ATTACHMENT 3**

### **CERTIFICATION**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

### **CONTRACTOR CERTIFICATION CLAUSES**

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)
2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
  - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
  - b. Establish a Drug-Free Awareness Program to inform employees about:
    - 1) the dangers of drug abuse in the workplace;
    - 2) the person's or organization's policy of maintaining a drug-free workplace;
    - 3) any available counseling, rehabilitation and employee assistance programs; and,
    - 4) penalties that may be imposed upon employees for drug abuse violations.
  - c. Every employee who works on the proposed Agreement will:
    - 1) receive a copy of the company's drug-free workplace policy statement; and,
    - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: (1) the Contractor has



**CONTRACTOR CERTIFICATION CLAUSES**  
Std CCC (1-03)

made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.)

3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)
4. **UNION ORGANIZING:** Contractor hereby certifies that no request for reimbursement, or payment under this agreement, will seek reimbursement for costs incurred to assist, promote or deter union organizing.
5. **CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT:** Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

**DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. **CONFLICT OF INTEREST:** Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.



## CONTRACTOR CERTIFICATION CLAUSES

Std CCC (1-03)

- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)
3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:
  - a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
  - b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
  - c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.
6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be:
  - (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
  - (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste



## **CONTRACTOR CERTIFICATION CLAUSES**

Std CCC (1-03)

discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other government entity.



**Attachment 4**  
**RFQ 400-03-101**  
**CUSTOMER REFERENCES**

STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION  
CONTRACTS OFFICE

**CUSTOMER REFERENCES**

**ATTACHMENT 4**

Provide a minimum of 4 references, use additional pages as needed.

Reference #1

Name of Organization	
Address	
Contact Name	
Contact Title	
Contact Phone Number	
Describe the services and products your firm provided to the organization.	



## ATTACHMENT 5

### STANDARD AGREEMENT

sTD. 213 (NEW 09/01)

AGREEMENT NUMBER
------------------

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

State Energy Resources Conservation and Development Commission (Commission)

CONTRACTOR'S NAME

To be completed by Commission

2. The term of this

Agreement is: To be completed by Commission

3. The maximum amount

of this Agreement is: \$ To be completed by Commission

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work

Exhibit B – Budget Detail and Payment Provision

Exhibit C\* – DGS General Terms and Conditions

GTC 103 or GIA 101  
(Number)

Pages

Pages

1-1-03

(Dated)

Exhibit D – Special Terms and Conditions (Attached hereto as part of this agreement)

Pages

Exhibit E – Additional Provisions

Pages

Exhibit F – Contacts

Page

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at [www.dgs.ca.gov/contracts](http://www.dgs.ca.gov/contracts)

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

#### CONTRACTOR

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

To be completed by Commission

BY (Authorized Signature)

—

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

To be completed by Commission

#### STATE OF CALIFORNIA

AGENCY NAME

State Energy Resources Conservation and Development Commission (Commission)

BY (Authorized Signature)

—

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Cheryl Raedel, Contracts Office Manager

ADDRESS

1516 Ninth Street, Sacramento, CA 95814

**California Department of General  
Services Use Only**

☐ Exempt per:



## **ATTACHMENT 5**

### **EXHIBIT A, SCOPE OF WORK**

The Scope of Work details are located in Section IV of the RFP.



## ATTACHMENT 5

### EXHIBIT B

#### Budget Detail and Payment Provision

The following clauses may or may not be included, Contract Officer (CO) to decide when developing this Exhibit for each agreement.

1. **INVOICING PROCEDURES:** For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.

Invoices shall include the Agreement Number and shall be submitted in duplicate not more frequently than monthly in arrears to: *(CO confirm)*

California Energy Commission  
Accounting Office, MS-2  
1516 9<sup>th</sup> Street, First Floor  
Sacramento, California 95814

2. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

3. **TRAVEL AND PER DIEM RATES:** Contractor shall be reimbursed for travel and per diem expenses using the same rates provided to nonrepresented state employees. Contractor may obtain current rates from the Commission Contract Officer. Travel expenses in excess of the state rates cannot be reimbursed.

4. **RETENTION:** The State shall retain from each invoice an amount equal to 10% of that invoice. The retained amount shall be held by the Commission and released to Contractor only upon the Commission's approval that the Contractor has satisfactorily completed all of the required services and the Final Report (if required) has been received and accepted.

If a contract consists of the performance of separate and distinct tasks, then any funds withheld for a particular task may be paid upon completion of that task.

Contractor shall invoice the State for retention withheld by the Commission.

*(CO confirm, if no retention is to be held, state so in this clause, also, identify what task(s) retention can be released when the task is complete.)*



## ATTACHMENT 5

5. **PAYMENT TERMS:** *(CO confirm/advance payment language goes here)*

- ☐ Monthly Flat Rate                      ☐ Quarterly Flat Rate                      ☐ One –Time Payment  
☐ Itemized Monthly or Quarterly Invoice  
☐ Advance Payment Not to Exceed \$\_\_\_\_\_ or \_\_\_\_\_% of Contract Amount  
☐ Reimbursement/Revenue  
☐ Other (Explain) (i.e. lump sum/deliverable)

6. **CONDITIONS:**

- A. No payment shall be made in advance of services rendered. *(CO confirm)*
- B. A request for payment must include an invoice with cost backup, such as, travel receipts (where appropriate) receipts for equipment or supplies, copies of subcontractor's invoice, deliverables as required by the Agreement, and written progress reports.
- C. Invoices shall identify charges by tasks, personnel, labor rates and hours, and expenses authorized by either this Agreement or subsequent Work Authorizations. *(CO to tailor to contract)*
- D. Payments shall be made to Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered and for which additional evidence is not required to determine its validity. Contractor will be notified via a Dispute Notification Form, within 15 working days of receipt of an invoice, if the State disputes the submitted invoice.
- E. Payment will be made in accordance with, and within the time specified, in Government Code Chapter 4.5, commencing with Section 927.
- F. Final invoice must be received by the Commission no later than 60 calendar days after the Agreement termination date.
- G. The State will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee's wages.

7. **BUDGET DETAIL**

To be determined.



## ATTACHMENT 5

### EXHIBIT C

#### GENERAL TERMS AND CONDITIONS

PLEASE NOTE: The General Terms and Conditions will be included in the Agreement by reference to internet site: [www.dgs.ca.gov/contracts](http://www.dgs.ca.gov/contracts), choose **Standard Language for Use in Standard Agreements** or if this Agreement is with another State agency, choose **Interagency Agreement**. The exact terms to be used will be those appearing on the website the date the Agreement is signed by Contractor.



## ATTACHMENT 5

### **EXHIBIT D**

#### **Special Terms and Conditions**

1. **CONTRACT MANAGEMENT:**

- A. Contractor may change Project Manager but the Commission reserves the right to approve any substitution of the Project Manager.
- B. The Commission may change the Contract Manager by notice given Contractor at any time signed by the Contract Officer.
- C. Commission staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the Commission Contract Manager. In this connection, Commission staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
- D. Contractor will not be permitted to utilize Commission personnel for the performance of services, which are the responsibility of Contractor unless the Commission Contract Manager previously agrees to such utilization in writing, and an appropriate adjustment in price is made. No charge will be made to Contractor for the services of Commission employees while performing, coordinating or monitoring functions.

2. **STANDARD OF PERFORMANCE:** Contractor shall be responsible in the performance of Contractor's/subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by Commission Contract Manager or its designee, shall be borne in total by the Contractor/subcontractor and not the Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard the following will apply: Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.

- A. Contractor/subcontractor will reperform, at its own expense, any task, which was not performed to the reasonable satisfaction of the Commission Contract Manager. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Commission.
- B. The Commission shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.
- C. If the Commission directs the Contractor not to reperform a task; the Commission Contract Manager and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Commission's right to reimbursement.



## ATTACHMENT 5

3. **SUBCONTRACTS:** Contractor **shall or may** enter into subcontracts with the following firms and/or individuals and shall manage the performance of the subcontractors.

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**OR**

No Subcontractors are named for this Agreement. If subcontractors are needed to perform any portion of this Agreement, the following criteria must be met and Contractor shall manage the performance of the subcontractors.

**AND**

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- B. Contractor shall be responsible for establishing and maintaining contractual agreements with, and the reimbursement of each of, the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; coordinating subcontractor accessibility to Commission staff, and submitting completed products to the Commission Contract Manager.
- C. All subcontracts shall contain the following: 1) the audit rights and non-discrimination provision stated in the General Terms and Conditions (Exhibit C); 2) further assignments shall not be made to any third or subsequent tier subcontractor without additional written consent of the Commission Contract Manager; and the confidentiality provisions in the Reports paragraph of this Agreement.
- D. Additions, Removal or Substitutions of Subcontractors

The Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by the Contractor. Such changes shall be subject to the following conditions:

- 1) If the Commission or Contractor requires the replacement or addition of subcontractor(s), the subcontractor(s) shall be selected using 1). A competitive bid process conducted in conformance with the State's and the Commission's procedures for competitive bids. For example, awards shall be made to the lowest bidder meeting the requirements of the bid document and obtaining a minimum of three bids. Contractor's competitive bid process shall be approved by the Commission Contract Manager and Contract Officer prior to release of the bid document. 2). The Commission may direct Contractor to sole source a subcontract with a specific firm, once the Commission Contract Manager has obtained sole source approval via Commission internal procedures. The Commission Contract



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Manager shall provide justification for the sole source subcontract to the Contracts Officer using the "Subcontractor Add" memo described below.

- 2) The Commission Contract manager shall complete and submit to the Commission Contract Officer a "Subcontractor Add" memo. This memo identifies the new subcontractor and what bidding method was used to obtain subcontractors (competitive or sole source).
- 3) Contractor shall submit any proposed subcontracts not originally identified in Contractor's proposal, or any substitution of subcontracts to the Commission for its approval prior to Contractor entering into it. Upon the termination of any subcontract, the Commission Contract Manager shall be notified immediately.

#### 4. **PERFORMANCE EVALUATION:**

Consistent with Public Contract Code Sections 10367 and 10369, the Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Commission shall notify and send a copy of the evaluation to the Contractor within 15 days. The Contractor shall have 30 days to prepare and send statements to the Commission and the DGS defending his or her performance. The Contractor's statement shall be filed with the evaluation in the Commission's Contract file and with DGS for a period of 36 months and shall not be a public record.

#### 5. **REPORTS:**

A. **Progress and Final Reports:** Contractor shall prepare progress reports summarizing all activities conducted by Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, Contractor shall prepared a comprehensive Final Report, on a schedule as provided in Exhibit A.

B. **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:

California Energy Commission  
Project Title  
Contractor Number  
By (Contractor)

C. **Ownership:** Each report shall become the property of the Commission.

D. **Non-Disclosure:** Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Commission Contract Manager, except as provided in F, below. Permission to disclose information on one occasion or public hearings held by the Commission relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or Commission's actions on the same, except to Commission staff, Contractor's own personnel involved in the performance of this Contract, or at public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Commission or any other party, based on information received from the Commission as to the role of Contractor or the content of any preliminary or final report,



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Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.

E. **Confidentiality**

No record which has been designated as confidential, or is the subject of a pending application of confidentiality, shall be disclosed by the Contractor, Contractor's employees or any tier of subcontractors, except as provided in 20 California Code of Regulations, Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 California Code of Regulations, Sections 2501, et seq.). At the election of the Contract Manager, Contractor, Contractor's employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the Commission Contract Manager or Contract Officer.

Each subcontract shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.

- F. **Disclosure:** Ninety days after any document submitted by the contractor is deemed by the Contract Manager to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

**"LEGAL NOTICE"**

**"This report was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."**

6. **CONTRACT DATA, OWNERSHIP RIGHTS:**

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.
- B. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Commission and shall belong to the Commission.
- C. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. The title to "proprietary data" shall remain



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with the Contractor throughout the term of this Agreement and thereafter. The extent of the Commission access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.

- D. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Contract at the Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- E. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Commission of the Final Report herein.
- F. Before the expiration of the three years, and before changing the form of or destroying any data, Contractor shall notify the Commission of any contemplated action and the Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Commission so elects, the expense of further preserving data shall be paid for by the Commission. Contractor agrees that the Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

### 7. **RIGHTS OF PARTIES IN COPYRIGHTS, PHYSICAL WORKS OF ART AND FINE ART**

The Contractor, by signing this Contract, expressly grants to the Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Contract a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.

Contractor, by signing this Contract, expressly conveys to the Commission all ownership of the physical works of art and fine art produced under this Contract. Contractor agrees it does not reserve any rights to the physical works of art and fine art produced under this Contract.

Contractor shall obtain these same rights for the Commission from all subcontractors and others who produce copyrightable material, works of art, or works of fine art under this Contract. Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subcontractors. No subcontract shall be entered into without these rights being assured to the Commission from the subcontractor.



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8. **PUBLIC HEARINGS:** If public hearings on the scope of work are held during the period of the Contract, Contractor will make available to testify the personnel assigned to this Agreement. The Commission will reimburse Contractor for compensation and travel of the personnel at the Contract rates for the testimony which the Commission requests.
9. **DISPUTES:** In the event of a Contract dispute or grievance between Contractor and the Commission, both parties shall follow the following two-step procedure. Contractor shall continue with the responsibilities under this contract during any dispute.

### A. Commission Dispute Resolution

The Contractor shall first discuss the problem informally with the Commission Contract Manager. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Commission Contracts Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Commission Contracts Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The Contracts Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the Contracts Officer decision, the Contractor may appeal to the second level.

The Contractor must prepare a letter indicating why the Contracts Officer's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the Contracts Officer's response. This letter shall be sent to the Commission's Executive Director within ten (10) working days from receipt of the Contracts Officer's decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Commission of the decision at a Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Commission at a regularly scheduled business meeting. Contractor will be provided with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

### B. Binding Arbitration

Should the Commission's Dispute Resolution procedure above fail to resolve a contract dispute or grievance to the satisfaction of the Contractor, the Contractor and Commission mutually may elect to have the dispute or grievance resolved through binding arbitration. If one party does not agree, the matter shall not be submitted to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later than six (6) months after the



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date of the contract's termination, despite when the dispute or grievance arose, and despite the applicable statute of limitations for a suit based on the dispute or grievance. If the parties do not mutually agree to arbitration, the parties agree that the sole forum to resolve a dispute is state court.

The cost of arbitration shall be borne by the parties as follows:

- 1) The AAA's administrative fees shall be borne equally by the parties;
- 2) The expense of a stenographer shall be borne by the party requesting a stenographic record;
- 3) Witness expenses for either side shall be paid by the party producing the witness;
- 4) Each party shall bear the cost of its own travel expenses;
- 5) All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Contract funds. Both parties must agree, in writing, to utilize contract funds to pay for arbitration costs.

### 10. **TERMINATION:**

The parties agree that because the Commission is a state entity and contracts on behalf of all Californian rate payers, it is necessary for the Commission to be able to terminate, at once, upon the default of Contractors and to proceed with the work required under the Agreement in any manner the Commission deems proper. Contractor specifically acknowledges that the unilateral termination of the Agreement by the Commission under the terms set forth below is an essential term of the Agreement, without which the Commission would not enter into the Agreement. Contractor further agrees that upon any of the events triggering the unilateral termination the Agreement by the Commission, the Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Commission.

This Agreement may be terminated for any reason set forth below.

#### A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, Commission shall pay Contractor only the reasonable value of the services theretofore rendered by Contractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
- 2) Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts his ability to perform under this Agreement; or
- 3) It is determined after notice and hearing by the Commission or the Executive Director that gratuities were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Commission, with a view toward securing an Agreement or securing favorable treatment with



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respect to awarding or amending or making a determination with respect to performance of the Agreement; or

- 4) Significant change in Commission policy such that the work or product being funded would not be supported by the Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Commission; or
- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.

**B. Without Cause**

The Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate the Contractor's expenses and obligations hereunder. Also, in such event, the Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

11. **WAIVER:** No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Commission to enforce at any time any of the provisions of this Contract, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Contract or any part of it or the right of the Commission to thereafter enforce each and every such provision.
12. **CAPTIONS:** The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.
13. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE:** In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.
14. **NOTICE:** Notice to either party may be given using the following delivery methods, certified mail, Federal Express, United Parcel Service, or personal delivery, providing evidence of receipt, to the respective parties identified on page one of this Agreement. Delivery by fax or e-mail is not considered notice for the purpose of this Agreement.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed 24 hours, or whenever the next business day occurs.

15. **STOP WORK:** The Commission Contract Officer may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.
  - A. **Compliance:** Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.



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- B. **Equitable Adjustment:** An equitable adjustment shall be made by Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.
- C. **Revoking a Stop Work Order:** Contractor shall resume the stopped work only upon receipt of written instructions from the Commission Contract Officer canceling the stop work order.

### 16. **INTERPRETATION OF TERMS**

Any inconsistency between the terms of any exhibits shall be resolved in favor of Exhibit A (Scope of Work) and Exhibit E (Additional Provisions).



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### **EXHIBIT E** **Additional Provisions**

The following clauses may or may not be included in agreement, Contracts Officer to decide when developing this Exhibit if any of the following clauses apply to the specific scope of work or if an additional clause or term is needed.

1. **CONFIDENTIALITY:**

A. Information Considered Confidential

All contractor information considered confidential at the commencement of this Agreement is designated in the attachment to this Exhibit.

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, the Parties have identified in the attachment to this exhibit, specific confidential information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the confidential information and presented in a sealed package to the Commission Contracts Officer. (Non-confidential deliverables are submitted to the Contract Manager.) All confidential information will be contained in the "confidential" volume, no confidential information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Information as a Deliverable

The Contractor and the Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Contractor shall follow the procedures for a request for designation of confidential information specified in 20 CCR 2505. The Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the attachment to this exhibit.

D. Disclosure of Confidential Information

Disclosure of confidential information by the Commission may be made only pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

2. **PROPOSAL INTERPRETATION:** This Agreement shall be conducted in accordance with the terms and conditions of the Solicitation, if applicable. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the Solicitation, this Agreement shall be considered controlling. Any inconsistency between the terms of any exhibits shall be resolved in favor of Exhibit D, Special Terms and Conditions, and Exhibit E, Additional Provisions.

3. **WORK AUTHORIZATION PROCESS:** The Commission Contract Manager shall prepare a Work Authorization.(WA) directing the work the Contractor provides. All WA shall be in writing,



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numbered sequentially and approved by the Contractor's Project Manager and Commission's Contract Manager before beginning work. The Commission Contract Manager shall file all signed WA with the Commission Contracts Office. Each WA shall detail the following:

1. Detailed scope of work and what task the WA falls within related to this Agreement, objective or goals, the technology area and identification of the Contract/subcontractor team.
  2. All significant materials to be developed or services delivered. Identification of any materials to be furnished by the Commission to the Contractor. The due dates for materials or services performed under the WA. The time period for entire WA. Estimated budget including person hours, hourly rates, travel expenses, and total cost of the WA.
- A. The Commission reserves the right to require the Contractor to stop or suspend work on any WA. The Commission Contract Manager shall provide in writing to the Contractor's Project Manager notice of the date work is halted or suspended. Costs incurred to that date shall be reimbursed in accordance with the termination clause.
- B. The actual costs of a completed WA shall not exceed the authorized amount, except under the following condition:
- If, in the performance of the work, the Contractor determines that the actual costs will exceed the estimated costs, Contractor shall immediately notify the Commission Contract Manager. Upon such notification, the Commission Contract Manager may:
- 1) Alter the scope of the WA to accomplish the work within the estimated costs; or
  - 2) Augment the dollar amount of the WA via an amendment; or
  - 3) Authorize the Contractor to complete the work for the actual costs; or
  - 4) Terminate the WA.
- C. Each WA shall be incorporated into this Agreement. However, it is understood and agreed by both parties that all of the terms and conditions of this Agreement shall remain in force with the inclusion of any such WA. A WA shall in no way constitute an independent contract, other than as provided pursuant to this Agreement, nor in any way amends or supersedes any of the other provisions of this Agreement.

#### **4. CONFLICT OF INTEREST:**

- A. Contractor agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest. Contractor shall report its findings in its progress report.
- B. Contractor shall submit a completed Fair Political Practices Commission Form 700, "Statement of Economic Interests" for each consultant as directed by the Commission's Contract Manager in consultation with the Commission's Chief Counsel's Office to file a statement.
- C. No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. This does not



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apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract which amounts to no more than 10 percent of the total monetary value of the consulting services contract.



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### EXHIBIT F

#### NAMES AND ADDRESSES OF AGREEMENT REPRESENTATIVES

<b>Commission Contract Manager:</b>  NAME, MS- California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916) Fax: (916) e-mail: @energy.state.ca.us	<b>Contractor Project Manager:</b>  (Name) (Contractor Name) Address  Phone: Fax: e-mail:
<b>Commission Contract Officer:</b>  Peg Pigeon, MS-18 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916) 654-7093 Fax: (916) 654-4423 e-mail: ppigeon@energy.state.ca.us  Deliver confidential deliverables to this location only.	<b>Contractor Contract Officer:</b>  (Name) (Contractor Name) Address  Phone: Fax: e-mail:
<b>Invoices, Progress Reports and Non-Confidential Deliverables to:</b>  Accounting Office, MS-2 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4401 Fax: 916-653-1435 e-mail: awilliams@energy.state.ca.us	
<b>Legal Notices:</b>  Cheryl Raedel, MS-18 Manager, Contracts Office California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: 916-654-4392 Fax: 916-654-4423 e-mail: craedel@energy.state.ca.us	(contractor legal person)



This request form should be completed by bidders wishing to apply for TACPA preferences for this solicitation.

*See reverse for program  
description and  
instructions for completing  
this form.*

## SECTION 2: REQUEST FOR 5% WORKSITE PREFERENCE

**SECTION 2: REQUEST FOR 5% WORKSITE PREFERENCE** *List the bidding firm and all suppliers and subcontractors who will work with the bidder to fulfil the terms of the contract. Indicate those firms for which the bidder is requesting worksite preference eligibility by providing the requested information. Attach additional pages if needed.*

[illegible]

### SECTION 3: REQUEST FOR 1% - 4% WORKFORCE PREFERENCE

- ☐ I request a 1% preference for hiring eligible persons to perform 5 - 9.99% of the total contract labor hours
- ☐ I request a 2% preference for hiring eligible persons to perform 10 - 14.99% of the total contract labor hours
- ☐ I request a 3% preference for hiring eligible persons to perform 15 - 19.99% of the total contract labor hours
- ☐ I request a 4% preference for hiring eligible persons to perform 20% or more of the total contract labor hours

## SECTION 4: CERTIFICATION

I hereby certify under penalty of perjury, that (1) the bidder is a California based company as defined in the TACPA regulations, (2) at least 50% of the labor hours required to manufacture the goods and to perform a contract for goods, or 90% of the labor hours required to perform a contract for services shall be performed at the eligible distressed area worksite(s) claimed in Section 2, (3) if applying for workforce preference, the bidder shall hire persons with a high risk of unemployment to perform the required contract labor hours as requested in Section 3, and (4) all information provided in this request is true, correct, and complete. Any person falsely certifying, willfully providing false information, omitting information, or failing to comply with the TACPA statute is subject to penalties, fines and possible loss of State contracting eligibility.

BIDDER'S SIGNATURE		PRINTED OR TYPED NAME	
TITLE	AREA CODE & PHONE NUMBER		DATE EXECUTED



### Program Description

The intent of the Target Area Contract Preference Act (TACPA) is to promote economic development and employment opportunities in distressed areas of the state by offering bidding preferences on qualified solicitations.

TACPA provides for two preferences: Worksite and Workforce.

*Worksite Preference:* Bidders may be eligible for a 5% bid preference on state goods and services contracts valued at more than \$100,000 if the worksite is located in a distressed area as designated by the State Office of Planning and Research.

TACPA allows state contracting officials to award the worksite preference when 50% of the labor hours required to manufacture the goods and to perform a contract for goods, or 90% of the labor hours required to perform a contract for services is performed at the approved worksites.

*Workforce Preference:* Companies qualifying for the 5% worksite preference may request an additional 1% - 4% workforce preference by certifying to hire a specified percent of their contract workforce from employees who are at high risk of unemployment as defined in California Government Code, Section 4532(f).

To request workforce preference, the bidder must first identify an eligible worksite.

TACPA bid preferences do not apply to contracts in which the worksite is fixed.

For more detail, see California Government Code, Section 4530 et seq. and California Code of Regulations, Title 2, Section 1896.30.

### Other Bidding Preference Programs

In addition to TACPA, the State has other bidding preference programs for which you might qualify:

EZA - Enterprise Zone Act (up to a 9% bidding preference)

LAMBRA - Local Agency Military Base Recovery Area Act (up to a 9% bidding preference)

Small Business - Certified small businesses in California can receive a 5% bidding preference.

A non-certified small business that claims any combination of EZA, TACPA or LAMBRA preferences cannot use these preferences to displace a certified small business.

### How the Bidding Preference Works

The TACPA bidding preference that you qualify for is used only for bid solicitation purposes, to a maximum of \$50,000. The preference does not alter the amount of the resulting contract.

If you qualify for more than one bidding preference (EZA, TACPA, LAMBRA, Small Business) the maximum preference allowed by law is 15% or \$100,000.

### Reporting Requirements

Firms receiving TACPA preferences must report their labor hours. Reference the state contract on which you are bidding for specific reporting requirements.

### How to Identify TACPA Locations

Contact the appropriate city or county planning and development office or your local Area Council of Governments and ask for the Census Tract and Block Group numbers for the firm or firms for which you are requesting worksite preference.

Then, contact the State of California, Department of General Services, Office of Small Business Certification and Resources at (916) 323-5478 and ask for the TACPA coordinator. The coordinator will tell you if the worksite is eligible.

### Instructions for completing "Target Area Contact Preferences Act (TACPA) Request" on Reverse

**Section 1:** Enter the solicitation number and the name of the state department or agency offering the solicitation.

**Section 2:** Enter the requested information for 1) the bidding firm, and 2) all firms with whom the bidder will be subcontracting to perform the work required to complete this bid. You must list all firms, including the manufacturer, if applicable, not just those requesting worksite preference.

*Firm's role in this bid:* Enter the appropriate description indicating what job the listed firm will perform.

*Tract and Block Numbers:* See instructions above on how to obtain tract and block numbers.

*Labor Hours Estimated:* For each firm listed, estimate the total labor hours to be performed. Total the estimated hours for each firm and enter them into the box labeled "Total Labor Hours Estimated"

*Criteria:*

A: The firm is located in a California eligible distressed area.

B: The firm will establish a worksite in a California eligible distressed area.

C: MAP REQUIRED. The firm is located in a census tract block that, when attached to an eligible distressed area, forms a contiguous boundary. If you enter "C", you must attach a map showing the relationship of the requested area to the distressed area.

D: MAP REQUIRED. The firm will establish a worksite located in a census tract block that, when attached to an eligible distressed area, forms a contiguous boundary. If you enter "D", you must attach a map showing the relationship of the requested area to the distressed area.

E: GOODS ONLY. The firm will purchase the contract goods from a manufacturer located in an eligible distressed area.

F: GOODS ONLY/MAP REQUIRED. The firm will purchase contract goods from a manufacturer located in a census tract block that, when attached to a distressed area, forms a contiguous boundary. If you enter "F", you must attach map showing the relationship of the requested area to the distressed area.

**Section 3:** Select the appropriate box, indicating the percentage of workforce preference you are requesting. To request workforce preference, the bidder must first identify an eligible worksite.

**Section 4:** The Bidder must complete and sign the Certification.



This request form should be completed by bidders wishing to apply for LAMBRA preferences for this solicitation.

BID NUMBER
AGENCY/DEPT.

List the bidding firm and **all** suppliers and subcontractors who will work with the bidder to fulfill the terms of the contract. Indicate the location of each supplier and subcontractor. Indicate the location of the worksite preference eligibility by providing the requested information. Attach additional pages if needed.

NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
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STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
NAME OF FIRM		FIRM'S ROLE IN THIS BID (Examples: Bidder, Manufacturer, Shipper, etc.)			
STREET ADDRESS	CITY	STATE	ZIP CODE	LABOR HOURS ESTIMATED	
TOTAL LABOR HOURS ESTIMATED					

**SECTION 2: REQUEST FOR 1% - 4% WORKFORCE PREFERENCE**

[illegible]

### SECTION 3: REQUEST FOR 1% - 4% WORKFORCE PREFERENCE

- ☐ I request a 1% preference for hiring eligible persons to perform 5 - 9.99% of the total contract labor hours
- ☐ I request a 2% preference for hiring eligible persons to perform 10 - 14.99% of the total contract labor hours
- ☐ I request a 3% preference for hiring eligible persons to perform 15 - 19.99% of the total contract labor hours
- ☐ I request a 4% preference for hiring eligible persons to perform 20% or more of the total contract labor hours

I hereby certify under penalty of perjury, that (1) the bidder is a California based company as defined in the LAMBRA regulations, (2) at least 50% of the labor hours required to perform a contract for goods, or 100% of the labor hours required to perform a contract for services shall be performed at the designated Local Agency Military Base Recovery Area(s) claimed in Section 2, (3) if applying for workforce preference, the bidder shall hire persons living within a Local Agency Military Base Recovery Area to perform the specified percent of total contract labor hours as requested in Section 3, and (4) all information provided in this request is true, correct, and complete. Any person falsely certifying, willfully providing false information, omitting information, or failing to comply with the EZA statute is subject to penalties, fines and possible loss of State contracting eligibility.

BIDDER'S SIGNATURE		PRINTED OR TYPED NAME	
TITLE	AREA CODE & PHONE NUMBER		DATE EXECUTED



Program Description	Other Bidding Preference Programs	Instructions for completing "LAMBRA" Preference Request on Reverse
<p>The intent of the Local Agency Military Base Recovery Area (LAMBRA) Act is to promote economic development and employment opportunities in designated LAMBRAS by offering bidding preferences on qualified solicitations.</p> <p>The LAMBRA Act provides for two preferences: Worksite and Workforce.</p> <p><i>Worksite Preference:</i> Bidders may be eligible for a 5% bid preference on state goods and services valued at more than \$100,000 if the worksite is located in a LAMBRA as designated by the State Trade and Commerce Agency.</p> <p>LAMBRA allows state contracting officials to award the bid worksite preference when 50% of the labor hours required to perform a contract for goods, or 100% of the labor hours required to perform a contract for services is performed at the approved worksites.</p> <p><i>Workforce Preference:</i> Companies qualifying for the 5% worksite preference may request an additional 1% - 4% workforce preference by certifying to hire a specified percent of their contract workforce employees from those designated as LAMBRA qualified individuals. (See Assembly Bill 3: Chapter 1012, 9/30/98).</p> <p>To request workforce preference, the bidder must first identify an eligible worksite.</p> <p>LAMBRA bid preferences do not apply to contracts in which the worksite is fixed.</p> <p>For more detail, see California Government Code, Section 7118 et seq., and California Code of Regulations, Title 2, Section 1896.100. et seq.</p>	<p>In addition to the LAMBRA Act, the State has other bidding preference programs for which you might qualify:</p> <p>TACPA - Target Area Contract Preference Act (up to a 9% bidding preference)</p> <p>EZA -Enterprise Zone Act (up to 9% bidding preference)</p> <p>Small Business - Certified small businesses in California can receive a 5% bidding preference.</p> <p>A non-certified small business that claims any combination of EZA, TACPA or LAMBRA preferences cannot use these preferences to displace a certified small business.</p> <p><b>How the Bidding Preference Works</b></p> <p>The LAMBRA bidding preference that you qualify for is used only for bid solicitation purposes, to a maximum of \$50,000. The preference does not alter the amount of the resulting contract.</p> <p>If you qualify for more than one bidding preference (EZA, TACPA, LAMBRA, Small Business) the maximum preference allowed by law is 15% or \$100,000.</p> <p><b>Reporting Requirements</b></p> <p>Firms receiving LAMBRA preferences must report their labor hours. Reference the state contract on which you are bidding for specific reporting requirements.</p> <p><b>How to Identify LAMBRA Locations</b></p> <p>Contact the State Trade and Commerce Agency at (916) 324-8211.</p>	<p><b>Section 1:</b> Enter the solicitation number and the name of the state department or agency offering the solicitation.</p> <p><b>Section 2:</b> Enter the requested information for 1) the bidding firm, and 2) all firms with whom the bidder will be subcontracting to perform the work required to complete this bid. You must list all firms, including the manufacturer, if applicable, not just those requesting worksite preference.</p> <p><i>Firm's role in this bid:</i> Enter the appropriate description indicating what job the listed firm will perform.</p> <p><i>Military Base Recovery Area Name:</i> See instructions above on "How to Identify LAMBRA Locations."</p> <p><i>Labor Hours Estimated:</i> For each firm listed, estimate the total labor hours to be performed. Total the estimated hours for each firm and enter them into the box labeled "Total Labor Hours Estimated."</p> <p><i>Criteria:</i></p> <p>A: The firm is located in a California designated LAMBRA.</p> <p>B: The firm will establish a worksite in a California designated LAMBRA.</p> <p>C: GOODS ONLY. The firm will purchase the contract goods from the manufacturer(s) located in a LAMBRA.</p> <p><b>Section 3:</b> Select the appropriate box, indicating the percentage of workforce preference you are requesting. To request workforce preference, the bidder must first identify an eligible worksite.</p> <p><b>Section 4:</b> The Bidder must complete and sign the Certification.</p>



This request form should be completed by bidders wishing to apply for EZA preferences for this solicitation.

*See reverse for program  
description and  
instructions for completing  
this form.*

## SECTION 2: REQUEST FOR 5% WORKSITE PREFERENCE

**SECTION 2: REQUEST FOR 5% WORKSITE PREFERENCE** *List the bidding firm and all suppliers and subcontractors who will work with the bidder to fulfil the terms of the contract. Indicate those firms for which the bidder is requesting worksite preference eligibility by providing the requested information. Attach additional pages if needed.*

[illegible]

### SECTION 3: REQUEST FOR 1% - 4% WORKFORCE PREFERENCE

- ☐ I request a 1% preference for hiring eligible persons to perform 5 - 9.99% of the total contract labor hours
- ☐ I request a 2% preference for hiring eligible persons to perform 10 - 14.99% of the total contract labor hours
- ☐ I request a 3% preference for hiring eligible persons to perform 15 - 19.99% of the total contract labor hours
- ☐ I request a 4% preference for hiring eligible persons to perform 20% or more of the total contract labor hours

## SECTION 4: CERTIFICATION

I hereby certify under penalty of perjury, that (1) the bidder is a California based company as defined in the EZA regulations, (2) at least 50% of the labor hours required to manufacture the goods and to perform a contract for goods, or 90% of the labor hours required to perform a contract for services shall be performed at the designated enterprise zone worksite(s) claimed in Section 2, (3) if applying for workforce preference, the bidder shall hire persons living in a targeted employment area or who are enterprise zone eligible employees to perform the specified percent of total contract labor hours as requested in Section 3, and (4) all information provided in this request is true, correct, and complete. Any person falsely certifying, willfully providing false information, omitting information, or failing to comply with the EZA statute is subject to penalties, fines and possible loss of State contracting eligibility.

BIDDER'S SIGNATURE		PRINTED OR TYPED NAME	
TITLE	AREA CODE & PHONE NUMBER		DATE EXECUTED



Program Description

The intent of the Enterprise Zone Act (EZA) is to promote economic development and employment opportunities in designated enterprise zones by offering bidding preferences on qualified solicitations.

EZA provides for two preferences: Worksite and Workforce.

*Worksite Preference:* Bidders may be eligible for a 5% bid preference on state goods and services contracts valued at more than \$100,000 if the worksite is located in an enterprise zone as designated by the State Trade and Commerce Agency.

EZA allows state contracting officials to award the bid worksite preference when 50% of the labor hours required to manufacture the goods and to perform a contract for goods, or 90% of the labor hours required to perform a contract for services is performed at the approved worksites.

*Workforce Preference:* Companies qualifying for the 5% worksite preference may request an additional 1% - 4% workforce preference by certifying to hire a specified percent of their contract workforce employees from a targeted employment area, or from enterprise zone eligible employees.

To request workforce preference, the bidder must first identify an eligible worksite.

EZA bid preferences do not apply to contracts in which the worksite is fixed.

For more detail, see California Government Code, Title 1, Division 5, Chapter 12.8, Section 707 et seq. and California Code of Regulations, Title 2, Section 1896.100.

Other Bidding Preference Programs

In addition to EZA, the State has other bidding preference programs for which you might qualify:

TACPA - Target Area Contract Preference Act (up to a 9% bidding preference)  
LAMBRA - Local Agency Military Base Recovery Area Act (up to a 9% bidding preference)  
Small Business - Certified small businesses in California can receive a 5% bidding preference.

A non-certified small business that claims any combination of EZA, TACPA or LAMBRA preferences cannot use these preferences to displace a certified small business.

How the Bidding Preference Works

The EZA bidding preference that you qualify for is used only for bid solicitation purposes, to a maximum of \$50,000. The preference does not alter the amount of the resulting contract.

If you qualify for more than one bidding preference (EZA, TACPA, LAMBRA, Small Business) the maximum preference allowed by law is 15% or \$100,000.

Reporting Requirements

Firms receiving EZA preferences must report their labor hours. Reference the state contract on which you are bidding for specific reporting requirements.

How to Identify Enterprise Zone Locations

Contact the city or county economic development office or the State Trade and Commerce Agency at (916) 324-8211.

Instructions for completing "Enterprise Zone Act Preference Request" on Reverse

**Section 1:** Enter the solicitation number and the name of the state department or agency offering the solicitation.

**Section 2:** Enter the requested information for 1) the bidding firm, and 2) all firms with whom the bidder will be subcontracting to perform the work required to complete this bid. You must list all firms, including the manufacturer, if applicable, not just those requesting worksite preference.

*Firm's role in this bid:* Enter the appropriate description indicating what job the listed firm will perform.

*Enterprise Zone Name:* See instructions above on “How to Identify Enterprise Zone Locations.”

*Labor Hours Estimated:* For each firm listed, estimate the total labor hours to be performed. Total the estimated hours for each firm and enter them into the box labeled “Total Labor Hours Estimated.”

*Criteria:*

A: The firm is located in a California designated enterprise zone

B: The firm will establish a worksite in a California designated enterprise zone.

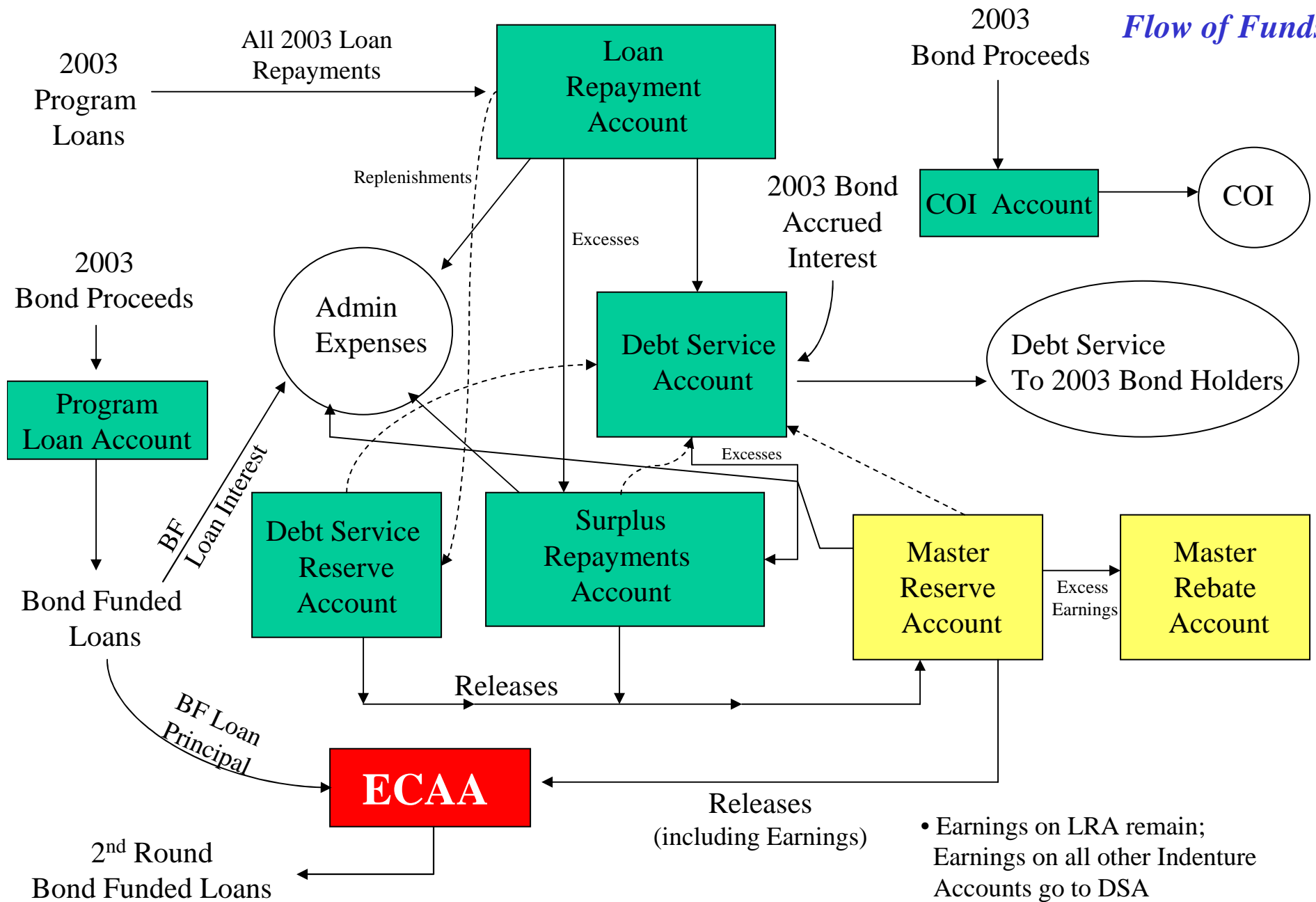
C: GOODS ONLY. The firm will purchase the contract goods from the manufacturer(s) located in a California designated enterprise zone.

**Section 3:** Select the appropriate box, indicating the percentage of workforce preference you are requesting. To request workforce preference, the bidder must first identify an eligible worksite.

**Section 4:** The Bidder must complete and sign the Certification.



**2003**  
***Flow of Funds***





**NEW ISSUE****Book-Entry Only****RATING: See "RATING" herein**

*In the opinion of Sidley Austin Brown & Wood LLP, San Francisco, California, Bond Counsel, based on existing statutes, regulations, rulings and judicial decisions, and assuming compliance with certain covenants in the documents pertaining to the Bonds and requirements of the Internal Revenue Code of 1986, as amended (the "Code"), as described herein, interest on the Bonds is not includable in the gross income of the owners of the Bonds for federal income tax purposes. In the further opinion of Bond Counsel, interest on the Bonds is not treated as an item of tax preference in calculating the federal alternative minimum taxable income of individuals and corporations. Interest on the Bonds, however, is included as an adjustment in the calculation of federal corporate alternative minimum taxable income and may therefore affect a corporation's alternative minimum tax liability. In the further opinion of Bond Counsel, interest on the Bonds is exempt from personal income taxes imposed by the State of California. See "TAX MATTERS" herein.*

**\$28,005,000**

**California Consumer Power and Conservation Financing Authority  
Energy Efficiency Master Trust Revenue Bonds  
Series 2003A**

**Dated: April 1, 2003****Due: March 1, as shown below**

The Energy Efficiency Master Trust Revenue Bonds, Series 2003A (the "Bonds") will be issued by the California Consumer Power and Conservation Financing Authority (the "Authority") pursuant to a Bond Indenture dated as of April 1, 2003 (the "Bond Indenture") between the Authority and the Treasurer of the State of California, as trustee (the "Bond Trustee"). The Bonds are being issued to provide funds to (i) finance the costs of the design, acquisition, installation and implementation of energy conservation projects, authorized under the Energy Conservation Assistance Act, as defined herein, by eligible borrowers which are public entities consisting of public or non-profit schools and hospitals, public care institutions and units of local government under a loan program (the "Program") administered by the California Energy Resources Conservation and Development Commission (the "Energy Commission") and (ii) pay costs associated with the issuance of the Bonds. See "APPLICATION OF BOND PROCEEDS AND OTHER AVAILABLE FUNDS."

The Bonds are to be issued only in book-entry form in denominations of \$5,000 or any integral multiple thereof. See "DESCRIPTION OF THE BONDS—Book-Entry Only System." Interest on the Bonds is payable semiannually on March 1 and September 1 of each year, beginning September 1, 2003. The Bonds are not subject to optional redemption prior to maturity. See "DESCRIPTION OF THE BONDS—Redemption."

The Bonds are special limited obligations of the Authority payable solely from revenues and receipts derived by the Authority from (i) payments by the Energy Commission under a Secured Loan Agreement (as defined herein), (ii) amounts in a reserve account (the "Debt Service Reserve Account") held in the custody of the Bond Trustee, including interest earnings thereon, that will be funded on the date of issuance of the Bonds in an amount equal to the 2003A Debt Service Reserve Requirement, as defined herein, and (iii) any amounts available pursuant to the Master Trust Agreement, as described herein. The obligation of the Energy Commission to make payments under the Secured Loan Agreement is a limited obligation of the Energy Commission, payable solely from loan repayments made by borrowers of certain Program loans pledged under the Secured Loan Agreement and certain other funds. See "SECURITY AND SOURCES OF PAYMENT OF THE BONDS."

**The Bonds do not constitute an indebtedness or liability of the State of California (the "State") or of any political subdivision thereof, other than the Authority, or a pledge of the faith and credit of the State or of any political subdivision, but shall be payable solely from the funds and accounts described herein. The Authority has no taxing power. The Bonds do not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation therefor, or to make any appropriation for their payment.**

**Maturity Schedule**

<b>Maturity</b>	<b>Amount</b>	<b>Coupon</b>	<b>Yield</b>	<b>Maturity</b>	<b>Amount</b>	<b>Coupon</b>	<b>Yield</b>
2004	\$1,900,000	2½%	1.25%	2010	\$3,375,000	5%	3.60%
2005	3,700,000	2½	1.65	2011	2,515,000	4	3.84
2006	3,430,000	2	2.05	2012	1,565,000	5	3.98
2007	3,340,000	4	2.50	2013	935,000	4	4.10
2008	3,375,000	5	2.90	2014	415,000	4	4.20
2009	3,455,000	5	3.29				

(Plus accrued interest from April 1, 2003)

**This cover page contains information for quick reference only. Investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision.**

The Bonds are subject to the approval of their validity by Sidley Austin Brown & Wood LLP, San Francisco, California, Bond Counsel, and subject to certain other conditions. Certain legal matters will be passed upon for the Energy Commission by its Chief Counsel, William M. Chamberlain, Esq. Certain legal matters will be passed upon for the Underwriter by Orrick, Herrington & Sutcliffe LLP, San Francisco, California. It is expected that the Bonds will be available for delivery on or about April 10, 2003.

**HONORABLE PHILIP ANGELIDES**  
**Treasurer of the State of California**

**Goldman, Sachs & Co.**

Dated: March 27, 2003



**California Consumer Power and Conservation Financing Authority**

S. David Freeman, *Chair*  
Philip Angelides, *Board Member and California State Treasurer*  
John Robert Stevens, *Board Member*  
Donald Vial, *Board Member*  
Sunne Wright McPeak, *Vice Chair*

**California Energy Resources Conservation and Development Commission**

William J. Keese, *Chair*  
Robert Pernell, *Commissioner*  
Arthur H. Rosenfeld, Ph.D., *Commissioner*  
James D. Boyd, *Commissioner*  
John L. Geesman, *Commissioner*

**Bond Counsel**

Sidley Austin Brown & Wood LLP  
San Francisco, California

**Financial Advisor to the Energy Commission**

Lamont Financial Services Corporation  
Los Angeles, California

**Financial Advisor to the Authority**

Public Financial Management  
San Francisco, California

**Underwriter's Counsel**

Orrick, Herrington & Sutcliffe LLP  
San Francisco, California



This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy the Bonds, nor shall there be any sale of, the Bonds in any state or other jurisdiction in which it is unlawful to make such offer, solicitation or sale in such state or jurisdiction.

This Official Statement is not to be construed as a contract with the purchasers of the Bonds. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representations of fact. No dealer, broker, salesperson or other person has been authorized by the Authority, the Energy Commission, or the Underwriter to give any information or to make any representations other than as contained herein in connection with the offering of the Bonds, and, if given or made, such other information or representations must not be relied upon as having been authorized by the Authority, the Energy Commission, or the Underwriter.

The Underwriter has submitted the following statement for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The information and expressions of opinion stated herein are subject to change without notice, and neither delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Authority, the Energy Commission, or any borrowers under the Program, since the date hereof. This Official Statement, including any supplement or amendment hereto, is intended to be deposited with one or more repositories.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXCEPTION FROM THE REGISTRATION REQUIREMENTS CONTAINED IN SUCH ACT. THE BONDS HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

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CAUTIONARY STATEMENTS REGARDING  
FORWARD-LOOKING STATEMENTS IN  
THIS OFFICIAL STATEMENT

Certain statements included or incorporated by reference in this Official Statement constitute “forward-looking statements” within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Section 27A of the United States Securities Act of 1933, as amended (the “Securities Act”). Such statements are generally identifiable by the terminology used such as “plan,” “projection,” “expectation,” “estimate,” “budget” or other similar words. Such forward-looking statements include, but are not limited to, (a) statements of the plans and objectives of the Authority or the Energy Commission to provide financing for energy conservation projects under the caption “THE PROGRAM,” (b) statements concerning future 2003A Program Loan Repayments under the captions



“THE PROGRAM,” “SECURITY AND SOURCES OF PAYMENT OF THE BONDS” and APPENDIX A, and (c) statements of the assumptions underlying or relating to statements described in (a) and (b) above (collectively, “Forward-Looking Statements”). All statements other than statements of historical facts included in this Official Statement are Forward-Looking Statements. Although the expectations reflected in such Forward-Looking Statements reflect the Authority’s, the Energy Commission’s and others’ current expectations, there can be no assurance that such expectations will prove to be correct.

THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS THAT MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. NEITHER THE AUTHORITY NOR THE ENERGY COMMISSION PLANS TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN ITS EXPECTATIONS OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR.



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Copies of this Official Statement may be obtained from:

**HONORABLE PHILIP ANGELIDES**

Treasurer of the State of California

Agent for Sale

P.O. Box 942809

Sacramento, California 94209-0001

1-800-900-3873



## **OFFICIAL STATEMENT**

**\$28,005,000**

**California Consumer Power and Conservation Financing Authority  
Energy Efficiency Master Trust Revenue Bonds  
Series 2003A**

### **INTRODUCTION**

The following introductory information is subject in all respects to more complete information contained elsewhere in this Official Statement. The order and placement of materials in this Official Statement, including the Appendices hereto, are not to be deemed to be a determination of relevance, materiality or relative importance, and this Official Statement, including the cover page and Appendices, should be considered in its entirety. The offering of the Bonds to potential investors is made only by means of the entire Official Statement.

The purpose of this Official Statement is to set forth certain information concerning the California Energy Resources Conservation and Development Commission (the "Energy Commission"), a commission of the State of California, and the California Consumer Power and Conservation Financing Authority, a public authority of the State of California (the "Authority"), and the \$28,005,000 principal amount of Energy Efficiency Master Trust Revenue Bonds, Series 2003A (the "Bonds"), to be issued by the Authority. The Authority is authorized pursuant to California Public Utilities Code Sections 3300 et seq. (the "Authority Act"), California Public Resources Code Sections 25410 et seq., as amended (the "Energy Conservation Assistance Act"), and the resolution adopted by the Authority on February 14, 2003, to issue the Bonds under a Bond Indenture dated as of April 1, 2003 (the "Bond Indenture"), between the Authority and the Treasurer of the State of California, as trustee (the "Bond Trustee").

### **Purpose of the Bonds**

The Authority will issue the Bonds pursuant to the Bond Indenture to provide funds to (i) finance the costs of the design, acquisition, installation and implementation of energy conservation projects authorized under the Energy Conservation Assistance Act for eligible public entities consisting of public or non-profit schools and hospitals, public care institutions and units of local government, and (ii) pay costs associated with the issuance of the Bonds. See "APPLICATION OF BOND PROCEEDS AND OTHER AVAILABLE FUNDS."

### **The Program**

Pursuant to the Energy Conservation Assistance Act, the Energy Commission established a lending program in 1979 for California public or non-profit schools and hospitals, public care institutions and units of local government (the "Program") to provide low-interest financing to such entities for energy conservation projects (the "Projects"). The Energy Conservation Assistance Act authorizes the Energy Commission to borrow money from the Authority, secured by loans made under this Program, and to use the proceeds of such borrowing to make additional loans under this Program. The Energy Commission and the Authority have entered into a memorandum of understanding to implement this leveraged loan Program.



## **The Authority's Master Trust Bond Program**

The Bonds are the first series of bonds issued by the Authority to finance loans under this leveraged loan Program. Each series of the Authority's bonds will be repaid from payments made on Program Loans pledged to the payment of such series of bonds, and from reserves specified in the indenture under which the series of Authority bonds is issued. In addition, all series of bonds issued under this leveraged loan Program, including the Bonds, will be secured by a Master Trust Agreement dated as of April 1, 2003 (the "Master Trust Agreement"), between the Authority, the Treasurer of the State of California, as Master Trustee (the "Master Trustee") and the Energy Commission and are referred to herein as "Master Trust Bonds." See "SECURITY AND SOURCES OF PAYMENT OF THE BONDS."

## **Security and Sources of Payment of the Bonds**

The Bonds are special limited obligations of the Authority payable solely from revenues and receipts derived by the Authority from (i) payments by the Energy Commission under a Secured Loan Agreement, dated as of April 1, 2003, to be executed by the Authority and the Energy Commission (the "Secured Loan Agreement"), (ii) amounts in a reserve account (the "Debt Service Reserve Account") held in the custody of the Bond Trustee that will be funded by the Energy Commission on the date of issuance of the Bonds in the amount of \$6,000,000, which is equal to the initial 2003A Debt Service Reserve Requirement, from amounts currently on deposit in the Energy Conservation Assistance Account created pursuant to the Energy Conservation Assistance Act, including interest earnings thereon, and (iii) any amounts available pursuant to the Master Trust Agreement. See "2003A Collateral" in the Defined Terms and the Summary of Certain Provisions of the Secured Loan Agreement in APPENDIX B hereto.

Under the Secured Loan Agreement, the Energy Commission has pledged to the Authority, as security thereunder, payments on previously funded loans (collectively the "2003A Program Loans"), made to certain local government and other entities (collectively, the "2003A Borrowers") under the Energy Commission's Program, as described herein in an amount calculated to be sufficient to pay debt service on the Bonds as it becomes due. The obligation of the Energy Commission to make payments under the Secured Loan Agreement is a limited obligation of the Energy Commission, payable solely from loan repayments on the 2003A Program Loans and the funds and accounts created under the Bond Indenture and Master Trust Agreement (sometimes referred herein as the "2003A Collateral," as defined in APPENDIX B hereto). The 2003A Program Loans will be the only loans of the Energy Commission pledged to the payment of the Bonds, although the 2003A Program Loans may be released, substituted or modified in the manner permitted in the Secured Loan Agreement. See "APPENDIX B—Summary of Legal Documents—Summary of Certain Provisions of the Secured Loan Agreement—Release, Substitution and Modification of 2003A Program Loans." No other assets of the Energy Commission or the 2003A Borrowers will be pledged to or available for the repayment of the Bonds. Additional loans of the Energy Commission (including loans to be funded with proceeds of the Bonds) may be pledged to the payment of future series of Master Trust Bonds. See "SECURITY AND SOURCES OF PAYMENT OF THE BONDS."

Each 2003A Program Loan is payable solely from energy cost savings resulting from operation of the 2003A Borrower's Project or other legally available sources. The 2003A Program Loans are not secured by any interest in the 2003A Borrowers' Projects or any other real or personal property of the 2003A Borrower. The Energy Conservation Assistance Act expressly provides that a 2003A Borrower cannot repay a Program Loan by the levy of additional taxes. See "SECURITY AND SOURCES OF PAYMENT OF THE BONDS" AND "RISK FACTORS."



**The Bonds do not constitute an indebtedness or liability of the State of California (the “State”) or of any political subdivision thereof, other than the Authority, or a pledge of the faith and credit of the State or of any political subdivision, but shall be payable solely from the funds and accounts described herein. The Authority has no taxing power. The Bonds do not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation therefor, or to make any appropriation for their payment.**

## **Other Information**

There follows in this Official Statement brief descriptions of the Bonds, certain of the Bond documents, the Authority, the Energy Commission, and the Program. APPENDIX A to this Official Statement provides a listing of the outstanding principal amount of each 2003A Program Loan. For those 2003A Program Loans which are not yet in repayment, the outstanding principal amounts shown represent amounts disbursed to date. APPENDIX B provides definitions of certain of the words and terms used in the Secured Loan Agreement (as defined herein), the Bond Indenture and the Master Trust Agreement and includes summaries of certain provisions of the Secured Loan Agreement, the Bond Indenture and the Master Trust Agreement. Set forth in APPENDIX C is the proposed form of the opinion anticipated to be rendered by Bond Counsel at the time of delivery of the Bonds. APPENDIX D contains the form of continuing disclosure agreement anticipated to be executed by the Energy Commission.

Such descriptions, information and summaries provided herein do not purport to be comprehensive or definitive. All references herein to any documents are qualified by the terms of such documents in their entirety. Until the issuance and delivery of the Bonds, copies of the documents described herein may be obtained from Goldman, Sachs & Co., as the underwriter of the Bonds. After delivery of the Bonds, copies of such documents will be available for inspection at the office of the Bond Trustee.

## **THE ENERGY COMMISSION**

The Energy Commission was created by the State Legislature in 1974 and is the State’s primary energy policy planning entity. The Energy Commission is responsible for forecasting future energy needs, licensing thermal power plants, promoting energy efficiency, developing energy technologies and supporting renewable energy, and planning for and directing the State’s response to energy emergencies.

The Energy Commission has administered programs to provide low-interest loans for energy efficiency improvements to public agencies and nonprofit entities since 1979. The Energy Commission has not previously issued debt or participated in debt financing to fund its loan programs. See “THE PROGRAM.”

The commissioners of the Energy Commission are as follows:

Name	Title	Term Expires
William J. Keese	Chair	January 2006
Robert Pernell	Commissioner	January 2004
Arthur H. Rosenfeld, Ph.D.	Commissioner	January 2005
James D. Boyd	Commissioner	January 2007
John L. Geesman	Commissioner	January 2008*

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\* Subject to confirmation by the State Senate in June 2003.



The principal office of the Energy Commission is located at 1516 Ninth Street, MS 39, Sacramento, California 95814. The Energy Commission's telephone number is (916) 654-5070.

## **THE PROGRAM**

### **General**

The Energy Conservation Assistance Act authorizes the Energy Commission to establish loan programs to finance the cost of energy conservation projects for various eligible participants such as public or non-profit schools and hospitals, public care institutions and units of local government (the "Program Participants"). The Energy Conservation Assistance Account (the "ECA Account") is used to support the Program.

Because the 2003A Program Loans are all funded through the ECA Account, this description of the Program emphasizes the ECA Account. A brief description of the Local Jurisdiction Energy Assistance Account appears in this section under the caption "Other Loan Program Accounts."

### **Authorizing Legislation**

The Energy Conservation Assistance Act authorizes the Energy Commission to provide low-interest energy efficiency loans to Program Participants. It also grants authority to the Energy Commission to pledge loans to the Authority as security for revenue bonds issued by the Authority in order to raise funds to enable the Energy Commission to make additional loans to eligible institutions. The Energy Conservation Assistance Act also provides authority for the Energy Commission and the Authority to determine the form and details of the loans securing such revenue bonds. Pursuant to this statutory authorization, the Authority and the Energy Commission have entered into a Memorandum of Understanding ("Memorandum of Understanding") dated as of November 20, 2002. The purpose of the Memorandum of Understanding is to state the intention of both entities to cooperate in the issuance of the Bonds in an amount up to \$30 million, secured by payments to be made by the Energy Commission under a Secured Loan Agreement with the Authority, secured by pledged 2003A Program Loan Repayments. See "SECURITY AND SOURCES OF PAYMENT OF THE BONDS." Proceeds from the sale of the Bonds will be used to augment the Program and are anticipated to be disbursed to public entity Program Participants under new loans to be originated during the next eighteen months.

### **ECA Account Program History**

Pursuant to the Energy Conservation Assistance Act, the ECA was established in 1979 in the State General Fund. Initially, the Legislature provided \$10 million to the ECA Account for each of fiscal years 1979-80 and 1980-81. The Legislature provided \$8 million more for streetlight loans in 1980. In the 2000-01 fiscal year, in response to California's energy shortage, the Legislature augmented the ECA Account with an additional \$50 million.

Since 1979, the Energy Commission has funded approximately 507 loans from the ECA Account to Program Participants and has disbursed approximately \$90.3 million. As of March 6, 2003, there were 121 active loans, comprised of approximately \$43.4 million in funds disbursed and \$17.5 million in amounts awarded but not yet drawn down. Historically, approximately 56% of the loans have been made to grade K-12 public schools and colleges; approximately 33% of the loans have been made to city and county governments, and approximately 12% have been made to special districts, public non-profit hospitals and public care facilities. By dollar volume, approximately 45% of the funds have gone to K-12



schools, 45% to city and county governments and about 9% to special districts, public non-profit hospitals and public care facilities.

APPENDIX A lists 93 2003A Program Loans that are pledged to repayment of the Bonds. Eighty-one loans are currently in repayment, and 12 loans have not yet been fully disbursed and so are not yet in repayment. All the 2003A Program Loans shown in APPENDIX A are with local public entities, with approximately 44.1 percent of the outstanding balance of the loans made to schools, approximately 50.3 percent to city and county governments, and approximately 5.6 percent to special districts. The largest Program Participant in the 2003A Program Loan portfolio represents approximately 6.9% of the total outstanding principal amount of 2003A Program Loans and approximately 7.6% of aggregate debt service on the Bonds. The Energy Commission has designated \$6,000,000 cash currently in the ECA Account to fund the Debt Service Reserve Account upon issuance of the Bonds.

### **Eligible Projects and Participants**

For ECA Account loans, eligible Program Participants include public or non-profit schools and hospitals, public care institutions and units of local government. A wide variety of energy efficient equipment and power generation projects can be funded. In the past, such projects have included lighting, HVAC, thermal energy storage, and photovoltaic panels. The Program provides funds to finance the complete project, including feasibility study, engineering, design and equipment costs as long as the energy savings for the project are sufficient to repay the loan, including principal and interest, within 11 years. For loans entered into after January 1, 2003, the maximum repayment period is 15 years. Eligible applicants must provide detailed technical analysis showing that the cost of the Project, plus interest on amounts loaned, calculated in a manner prescribed by the Energy Commission, will be recovered through savings in the cost of energy through the repayment period of the loan. Although all 2003A Program Loans are with public entities, and proceeds of the Bonds will be used to make Program Loans solely to public entities, Program Loans securing future series of Master Trust Revenue Bonds may be made to eligible private Borrowers.

### **Application Process**

Periodically, and at least annually, the Energy Commission advertises the availability of loans through mass mail to potential Program Participants. The Energy Commission also advertises the Program through professional associations such as the California League of Cities, the County Supervisors Association of California, the California Association of School Business Officials, the School Board Association, a variety of professional organizations, including engineers, construction managers and architects, and many others. The Energy Commission also works closely with energy services companies, State utilities and other State agencies to ensure that information is widely distributed on the availability of Energy Commission loans and how the loans can work in conjunction with utility rebates and other programs. Energy Commission staff regularly participate in many statewide association trade shows and are frequently asked to speak on panels and participate in regional forums to advertise the availability of loans and other Energy Commission programs.

In order to receive a loan under the Program, eligible Program Participants must submit an application to the Energy Commission. The application must be accompanied by a technical report demonstrating that the energy efficiency project is technically and economically feasible. Guidelines for the technical reports are available from the Energy Commission and contained in "Guide to Preparing Feasibility Studies for Energy Efficient Projects," Publication No. P400-00-002. The Program Participant must also submit a resolution of the governing board or authorized representative of the applicant



authorizing the loan. Upon receipt of the application, the Energy Commission staff reviews the application for completeness.

The Energy Commission's engineering staff then analyzes each potential Project for which loan funds are requested. The analysis includes determining whether the applicant's projected energy savings, Project assumptions and costs submitted in the applicant's technical report are reasonable and will be sufficient to repay the loan. If necessary, the Energy Commission's engineering staff will visit the site to personally verify the conditions represented in the applicant's technical report. Site inspections include verification, through spot check, of the name plate rating, type and condition of the equipment being replaced, lighting wattages, floor areas and other critical factors that effect project feasibility and energy savings. If the Energy Commission's engineering review of the Program Participant's documentation indicates that the projected energy savings are less than the applicant projected, the Energy Commission will use the reduced energy savings as the basis for determining the maximum amount that can be loaned. In these cases, Program Participants willing to accept partial funding have the option of finding the additional needed funds from other legally available sources such as internal re-directed funds or utility rebates. In all cases, the projected savings for all approved loans must be sufficient to meet the Program's payback requirements before the loan can be authorized. Program Loans are approved only when information is submitted and reviewed, evidencing that the Project costs are reasonably expected to be recovered through energy cost savings during the repayment period of the loan.

Prior to January 1, 2003, principal and interest on the loans were required to be repaid from savings within 11 years. Senate Bill 1790 (Chapter 601, Statutes of 2002) which became effective January 1, 2003, extended this maximum loan term to 15 years. Although loans entered into after January 1, 2003 may have terms up to 15 years, no 2003A Program Loan has a term exceeding 11 years. No loan is approved for a term which is longer than the expected life of the Project being funded. Each loan application passing technical review by the staff is then considered for approval by the Energy Commission. Loans are formally approved by the Energy Commission at a regularly scheduled business meeting.

### **Loan Repayments**

After loan approval, the Energy Commission sends each applicant a loan agreement and promissory note for signature. The loan agreement and promissory note are effective when signed by the authorized agents of the Program Participant and the Energy Commission. All disbursements of loan funds to the Program Participant are made only after invoices documenting expenditures are received, reviewed and approved by the Energy Commission's project manager, with the exception that, for loans approved prior to March 2003, up to ten percent of the funds authorized by the loan agreement could be disbursed by the Energy Commission at the request of the Program Participant prior to the time the Program Participant incurs actual expenditures, which amount is deducted from the Program Participant's subsequent invoices to the Energy Commission for payment. After the Program Participant's Project is complete, a final report and invoice are submitted to the Energy Commission. A final amortization schedule is then developed by the Energy Commission's Grants and Loans office, based on the actual schedule and amount of loan funds drawn by the Program Participant. Interest accrues during construction only on those funds drawn and from the date of the actual draw. The first loan repayment is due between 6 and 18 months after the Program Participant's Project is complete, in order to allow energy savings from the Project to occur.

At the time the final amortization schedule is generated, the Energy Commission Grants and Loans Office also sends out requirements and related information regarding the Annual Energy Use Reports of the Program Participant that are due for the next three years under the existing loan agreement.



The Accounting Office sends out invoices to loan recipients about six weeks before each loan repayment is due, indicating the payment amount and the due date. All loan repayment invoices are due each year on June 22 and December 22 until the loan is repaid. There is a 30-day grace period after the repayment due date before penalties for late payment may be assessed.

The Energy Conservation Assistance Act expressly provides that a Program Participant cannot repay a Program Loan by the levy of additional taxes. A Program Participant must repay its loan from energy cost savings resulting from the implementation of the applicable Project, calculated in a manner prescribed by the Energy Commission, or from other legally available sources.

The Energy Conservation Assistance Act requires loan recipients to annually compute the cost of energy saved and to annually budget an amount at least sufficient to make the semi-annual loan payments. Over the history of the Program, some Program Participants have reported that savings were not realized and inquired whether the loan needed to be repaid. In all cases, after the equipment operations were corrected and/or calculations adjusted, energy savings were verified. If necessary, the Energy Commission could renegotiate loan terms (such as extending the term of the loan, up to the legally authorized maximum term) if needed to realize full loan repayment due to lower projected annual energy savings. See “RISK FACTORS—Lack of Energy Savings.”

Set forth below is delinquency information for the Program Loans as of the end of the four most recent loan payment periods, consisting of the six-month periods ended June 22, 2001, December 22, 2001, June 22, 2002 and December 22, 2002. As stated above, the Program Loans provide for a 30-day grace period prior to being deemed delinquent.

Loan Payment Period Ended	Percentage of Amounts Due		
	Delinquent at end of 30-day grace period	Delinquent after 60 days	Delinquent after 90 days
6/22/01	3.83%	3.83%	3.83%
12/22/01	4.71%	0%	0%
6/22/02	4.65%	1.97%	1.97%
12/22/02	1.32%	0.16%	0%

In the 23-year history of the Program, only two Program Participants have failed to fully repay a Program Loan. Both incidents were a result of the respective Program Participant’s filing for bankruptcy. One of the nonpayments involved a loan in the principal amount of \$25,000 made to Timpany Center, a public care non-profit facility; the other, in the amount of \$66,063, was made to the Oakdale Joint Union High School District for an energy project at Riverbank High School. The incidents of nonpayment were resolved with a \$3,801 write-off to the original loan payment scheduled for the public care facility and a \$5,903 write-off to the Oakdale Union High School (Riverbank High School). The outstanding balance of the loan to Oakdale Union High School, minus \$5,903 in interest and late charges, was paid by Riverbank Unified School District after it absorbed the troubled Oakdale Union High School District. Neither of these loans are pledged to repayment of the Bonds. Although the Program has historically experienced a low rate of loan nonpayment, there can be no assurance that the 2003A Program Loans, which are pledged to repayment of the Bonds, will exhibit a similarly low rate of nonpayment in the future.

The Energy Commission will continue to administer the Program and collect loan repayments as described above. As of March 6, 2003, there were 92 loans in the repayment mode, totaling \$33.9 million in funds disbursed, and there were 29 loans in the draw-down mode, totaling \$28.0 million in funds



authorized. The Energy Commission will deposit all 2003A Program Loan Repayments, without any deduction or offset, into the Loan Repayment Account promptly after they are received, which amounts will be applied in accordance with the terms of the Secured Loan Agreement and the Bond Indenture. See “SECURITY AND SOURCES OF PAYMENT OF THE BONDS” and “APPENDIX B—Summary of Legal Documents—Summary of Certain Provisions of the Secured Loan Agreement.”

### **2003A Program Loans**

A selected group of loans to public entities that have begun repayment, as well as some loans which are expected to begin repayment in the near future (collectively, the “2003A Program Loans”), will be pledged under the Secured Loan Agreement, and 2003A Program Loan Repayments thereunder will secure the payment of debt service on the Bonds. In addition, a portion of the Program cash currently available for loans will be deposited in the Debt Service Reserve Account on the date of issuance of the Bonds. Other than as described in this Official Statement, the Secured Loan Agreement and the Bond Indenture, all other Program account balances are not dedicated to repayment of the Bonds and may be used for any purpose authorized by the Energy Conservation Assistance Act. The 2003A Program Loans may be released, substituted or modified in accordance with the Secured Loan Agreement. See “APPENDIX B—Summary of Legal Documents—Summary of Certain Provisions of the Secured Loan Agreement—Release, Substitution and Modification of 2003A Program Loans.” No loans to be made with the proceeds of this series of Bonds will be included among the 2003A Program Loans.

### **Transfers from the Energy Conservation Assistance Account**

Under the Energy Conservation Assistance Act, the ECA Account is continuously appropriated, without regard to fiscal year, and is available to be used for Program expenditures without the need for additional annual appropriations. Amounts in the ECA Account are to be disbursed by the State Controller for the purposes of the Program as authorized by the Energy Commission. The Energy Commission may expend from the ECA Account an amount to pay for the actual administrative costs incurred in connection with the Program, which amount may not exceed 5 percent of the annual loan repayments, although no amounts for such administrative costs will be deducted from the 2003A Program Loan Repayments. In addition, an amount not to exceed 10 percent of the balance in the ECA Account on July 1 of each year may be used by the Energy Commission to contract and provide grants for technical services in support of the Program.

### **Other Loan Program Accounts**

In 1986, the Legislature added Chapter 5.4 to Public Resources Code and created the Local Jurisdiction Energy Assistance Account (the “LJEA Account”). Pursuant to California Public Resources Code Sections 25440 *et seq.*, as amended (the “Local Jurisdiction Energy Assistance Act”), the LJEA Account was established in 1986 with funding originating from a Petroleum Violation Escrow fund that was established pursuant to a federal court decision due to oil overcharges in the 1970’s. The Legislature provided a total of \$7 million in Petroleum Violation Escrow funds for loans, consisting of \$3 million for public schools and \$4 million for local governments. For local government loans funded from the LJEA Account, eligible borrowers include any city, county or regional planning agency or any combination thereof formed for the joint exercise of any power. For public school loans funded from the LJEA Account, eligible borrowers include school districts. As of March 6, 2003, the Energy Commission had funded 127 loans from the LJEA Account, totaling approximately \$12.3 million in funds disbursed and \$5 million in amounts awarded but not yet drawn down.



The LJEAL loan program is similar to the ECA Program described above, but LJEAL loans will not be included in the loan portfolio securing payment of the Bonds, and Bond proceeds will not be used to fund LJEAL loans. However, LJEAL loans may be used to secure future series of Master Trust Revenue Bonds.

### **Program Loan Audit**

For the fiscal year ended June 30, 2002, and prior fiscal years, the Energy Commission did not arrange for an independent audit of the Program Loans by a private accounting firm. In addition, the annual audit report prepared by the State Controller regarding the Energy Commission does not audit individual Program Loans.

The information concerning the Program and the 2003A Program Loans presented in this Official Statement has been provided by the Energy Commission but has not been reviewed by an independent auditor. Any material inaccuracies in the information presented in this Official Statement could have a material adverse effect on the sources of security and payment for the Bonds and the market price for the Bonds.

Pursuant to the Secured Loan Agreement, the Energy Commission has covenanted to retain an independent private accounting firm to audit the performance of the 2003A Program Loans during each fiscal year, beginning with the fiscal year ending June 30, 2003, and continuing each subsequent fiscal year until the Bonds are paid in full. The result of the audit will be filed with the Bond Trustee and other public information repositories in accordance with the Secured Loan Agreement and the Continuing Disclosure Agreement. See "APPENDIX B—Summary of Legal Documents—Summary of Certain Provisions of the Secured Loan Agreement—Release, Substitution and Modification of 2003A Program Loans" and "—Books and Records; Audits;" and "CONTINUING DISCLOSURE."

## **THE AUTHORITY**

### **General**

The Authority is a public authority of the State organized and existing under the laws of the State. Pursuant to the Authority Act and the Energy Conservation Assistance Act, the Authority is authorized to issue the Bonds and to provide for the security of the Bonds as herein described. To accomplish such actions, the Authority is authorized to enter into the Memorandum of Understanding, the Bond Indenture, the Secured Loan Agreement (as defined herein) and the Master Trust Agreement.

The purpose of the Authority is to provide for the development and conservation of the energy resources of the State. The Authority Act confers upon the Authority the power to operate, acquire, construct, and finance such energy efficiency projects and to issue bonds and make loans to pay the costs of such energy efficiency projects. The Authority Act further authorizes the Authority to issue and sell revenue bonds to provide funds for energy conservation projects authorized under the Energy Conservation Assistance Act. The Authority also has general powers, which include the power to sue and be sued in its own name, and to make and execute contracts and other instruments necessary or convenient to carry out its purposes. The Authority has no taxing power.

Pursuant to Public Utilities Code Section 3347, the Bureau of State Audits will, prior to January 1, 2005, perform an evaluation of the effectiveness of the Authority's activities, including a recommendation as to the continued need for the Authority to exist beyond January 1, 2007. Public



Utilities Code Section 3384 provides that the Authority may not finance or approve any new program, enterprise or project on or after January 1, 2007, unless authority to approve such an activity is granted by statute prior to January 1, 2007. However, this limitation will not affect the rights of owners of Bonds issued prior to that time.

### **Membership of the Authority**

The current members of the Authority, their titles and expiration dates of their terms of office are as follows:

<u>Name</u>	<u>Title</u>	<u>Term Expires</u>
S. David Freeman	Chair	August 2004
Sunne Wright McPeak	Vice Chair	August 2003
John Robert Stevens	Board Member	August 2005
Donald Vial	Board Member	August 2006
Philip Angelides	Board Member and California State Treasurer	No Expiration Date

The principal office of the Authority is located at 901 P Street, Suite 142A, Sacramento, California 95814. The Authority's telephone number is (916) 651-9750.

### **Other Indebtedness**

The Authority has not heretofore sold or delivered any other bonds or indebtedness.

The Bonds and additional bonds that may be issued under the Program and designated as Master Trust Bonds are secured by the Master Trust Agreement. It is expected that future bonds issued for the benefit of the Program will also be secured by the Master Trust Agreement, as determined by the Authority and the Energy Commission at the time such bonds are issued. See "SECURITY AND SOURCES OF PAYMENT OF THE BONDS—Master Trust Agreement."

The Authority may enter into separate agreements in the future with other entities for the purpose of providing financing for other eligible projects and programs. Any bonds or other obligations which may be issued by the Authority for such other entities in the future will be created under separate and distinct bond indentures or resolutions and secured by loan agreements, instruments, properties and revenues separate from those securing the Bonds.

## **DESCRIPTION OF THE BONDS**

### **General Description**

The Bonds will be issued as fully registered bonds in the denominations of \$5,000 or any integral multiple thereof and will be dated April 1, 2003. The Bonds will mature on the dates and will bear interest at the interest rates per annum set forth on the cover hereof. Each Bond shall bear interest from the date of delivery or from the most recent date to which interest has been paid or duly provided for, payable semiannually on March 1 and on September 1 of each year commencing September 1, 2003 (hereinafter a "Bond Payment Date"). Interest shall be computed on the basis of a 360-day year of twelve 30-day months.



The principal of all Bonds shall be payable by check or other acceptable method at maturity to the persons in whose names such Bonds are registered on the bond register maintained by the Bond Trustee at the maturity date thereof, upon the presentation and surrender of such Bonds at the principal trust office or at such other office designated by the Bond Trustee for such purpose.

The interest payable on each Bond on any Bond Payment Date shall be paid by the Bond Trustee to the registered owner of such Bond as shown on the bond register at the close of business on the Record Date, (1) by check or other acceptable method sent to such registered owner at the address as it appears on the bond register or at such other address as is furnished to the Bond Trustee in writing by such owner, or (2) at the written request addressed to the Bond Trustee by any owner of Bonds in the aggregate principal amount of at least \$1,000,000, by electronic transfer to such owner upon written notice to the Bond Trustee from such owner containing the electronic transfer instructions (which shall be located in the continental United States) to which such owner wishes to have such transfer directed, provided such written notice is given by such owner to the Bond Trustee not less than five Business Days before the applicable Record Date. Any such written notice for electronic transfer shall be signed by such owner and shall include the name of the bank, its address, its ABA routing number and the name, number and contact name related to such owner's account at such bank to which the payment is to be credited.

### **Redemption**

The Bonds are not subject to optional redemption prior to maturity.

### **Book-Entry Only System**

The Bonds are available in book-entry only form and beneficial ownership interests therein may be purchased in the principal amount of \$5,000 or any integral multiple thereof. Purchasers of the Bonds will not receive certificates representing their interests in the Bonds. See "APPENDIX E—Book-Entry Only System."

## **APPLICATION OF BOND PROCEEDS AND OTHER AVAILABLE FUNDS**

### **The Projects**

The proceeds of the Bonds (after payment of costs of issuance and deposit of accrued interest on the Bonds in the Debt Service Account to pay interest on the Bonds on the first Bond Payment Date) will be deposited in the Program Loan Account established by the Bond Indenture and expended by the Energy Commission solely as authorized by the Energy Conservation Assistance Act and the Secured Loan Agreement: to fund Program Loans to pay costs directly related to the design, acquisition, installation and implementation of Bond-financed Projects for public entities. Prior to disbursement of funds from the Program Loan Account, each Program Participant must request payment from the Energy Commission in accordance with Program criteria. See "THE PROGRAM—Loan Repayments."

### **Debt Service Reserve Account**

Pursuant to the Secured Loan Agreement a portion of the moneys currently on deposit in the ECA Account will be applied by the Energy Commission to fund the Debt Service Reserve Account on the date of issuance of the Bonds in an amount equal to \$6,000,000, representing the initial 2003A Debt Service Reserve Requirement. Amounts in the Debt Service Reserve Account are available as security for the Bonds, and interest earnings on amounts in the Debt Service Reserve Account will be applied to the payment of debt service on the Bonds. In addition, as principal is repaid on the Bonds, amounts in the



Debt Service Reserve Account will be released and will be available pursuant to the Master Trust Agreement for payment of debt service on any Master Trust Bonds. See the section herein captioned “SECURITY AND SOURCES OF PAYMENT OF THE BONDS.”

## Sources and Uses of Funds

The following sets forth the estimated sources and uses of funds relating to the issuance of the Bonds:

### Sources of Funds

Par amount of Bonds	\$28,005,000.00
Equity Contribution by Energy Commission <sup>(1)</sup>	6,000,000.00
Plus Net Original Issue Premium	1,310,685.10
Accrued Interest <sup>(2)</sup>	27,126.90
<u>Total</u>	<u>\$35,342,812.00</u>

### Uses of Funds

Deposit to Program Loan Account	\$28,540,200.10
Costs of Issuance (including Underwriter’s discount and Authority fee)	775,485.00
Debt Service Account	27,126.90
Debt Service Reserve Account	6,000,000.00
<u>Total</u>	<u>\$35,342,812.00</u>

<sup>(1)</sup> Previously committed but undisbursed Program cash.

<sup>(2)</sup> Representing interest from April 1, 2003, to the date of delivery.

## SECURITY AND SOURCES OF PAYMENT OF THE BONDS

### General

The Bonds are special limited obligations of the Authority, payable solely from revenues and receipts derived by the Authority from (i) payments by the Energy Commission under the Secured Loan Agreement (as defined below), (ii) amounts in the Debt Service Reserve Account, including interest earnings thereon, and (iii) any amounts available pursuant to the Secured Loan Agreement, the Bond Indenture and the Master Trust Agreement. See “2003A Collateral” in APPENDIX B, and see “Secured Loan Agreement” and “Master Trust Agreement” below.

Under the Bond Indenture, the Authority has pledged its rights and interest (other than Authority Retained Rights) under the Secured Loan Agreement to the Bond Trustee to secure payment of the Bonds.

The obligation of the Energy Commission to make payments under the Secured Loan Agreement is a limited obligation of the Energy Commission, payable solely from 2003A Program Loan Repayments made by the 2003A Borrowers under the 2003A Program Loans pledged under the Secured Loan Agreement. Pursuant to the Secured Loan Agreement, the Energy Commission has pledged, and granted a security interest in and to, such 2003A Program Loans and the 2003A Program Loan Repayments thereunder (subject to Energy Commission Retained Rights) to the Authority to secure repayment of amounts under the Secured Loan Agreement.



Each 2003A Program Loan is payable solely from energy cost savings resulting from operation of the 2003A Borrower's Project or other legally available sources. The 2003A Program Loans are not secured by any interest in the 2003A Borrower's Project or any other real or personal property of the 2003A Borrower. The Energy Conservation Assistance Act expressly provides that a 2003A Borrower cannot repay a loan by the levy of additional taxes. See "THE PROGRAM—Loan Repayments."

### **Secured Loan Agreement**

In connection with the issuance of the Bonds, the Authority and the Energy Commission will enter into the Secured Loan Agreement pursuant to which the Energy Commission has agreed to make payments to the Authority in amounts and at the times sufficient to repay the Bonds as the same become due and payable under their terms. The obligation of the Energy Commission to make such payments will be a limited obligation, payable solely from the 2003A Collateral pledged by the Energy Commission under the Secured Loan Agreement as security therefor. See "THE PROGRAM" and APPENDIX A for a description of the outstanding 2003A Program Loans initially pledged under the Secured Loan Agreement as security for the Bonds.

As of the date of issuance of the Bonds, the scheduled debt service payments on the 2003A Program Loans is expected to be at least sufficient to pay scheduled debt service on the Bonds. The 2003A Program Loans will be the only loans of the Energy Commission pledged to the payment of the Bonds. Additional loans of the Energy Commission may be pledged to the payment of future series of Master Trust Bonds.

The 2003A Borrowers will continue to make 2003A Program Loan Repayments to the Energy Commission, and such repayments will be deposited into the Loan Repayment Account pursuant to the Secured Loan Agreement. 2003A Program Loan Repayments are due June 22 and December 22 of each year and are delinquent 30 days after those dates. The Secured Loan Agreement provides that not later than 15 days prior to a Bond Payment Date, the Authority will transfer to the Bond Trustee, for deposit in the Debt Service Account held under the Bond Indenture, 2003A Program Loan Repayments in an amount sufficient to pay debt service on the Bonds on such date and for deposit in the Debt Service Reserve Account the amount necessary to cause the amount in the Debt Service Reserve Account to equal the 2003A Debt Service Reserve Requirement.

### **Debt Service Reserve Account**

The Bond Indenture creates the Debt Service Reserve Account, which will be held in the custody of the Bond Trustee and maintained in a subaccount of the Special Deposit Fund in the California State Treasury. The Debt Service Reserve Account will be funded from available cash in the Program on the date of issuance of the Bonds in the amount of \$6,000,000, which represents the initial 2003A Debt Service Reserve Requirement. Following the first principal payment date of the Bonds on March 1, 2004, and on each principal payment date thereafter, the amount of the 2003A Debt Service Reserve Requirement will be reduced to an amount which is the greater of (i) the maximum debt service on the Bonds payable in any fiscal year and (ii) 20% of the principal amount of Bonds (the "2003A Debt Service Reserve Requirement"). Amounts on deposit in the Debt Service Reserve Account will be invested in Permitted Investments according to procedures authorized for such investments by the State Treasurer. See "APPENDIX B—Summary of Legal Documents—Summary of Certain Provisions of the Bond Indenture—Investment of Moneys." One business day prior to any Bond Payment Transfer Date (which is 15 days prior to a Bond Payment Date), the interest earnings on the amounts in the Debt Service Reserve Account will be transferred to the Debt Service Account to be applied for the payment of debt service on the Bonds, if needed.



If there is not sufficient money in the Debt Service Account to pay debt service on the Bonds (after application of the interest earnings on the Debt Service Reserve Account), as the same shall become due, moneys on deposit in the Debt Service Reserve Account will be used to pay debt service on the Bonds. If amounts in the Debt Service Reserve Account are insufficient to fund the deficit, the Bond Trustee will notify the Master Trustee and request that an amount equal to the deficiency be held in the Master Reserve Account. See “SECURITY AND SOURCES OF PAYMENT OF THE BONDS—Master Trust Agreement.” On each principal payment date, any amount in excess of the 2003A Debt Service Reserve Requirement will be released from the Debt Service Reserve Account for deposit into the Master Reserve Account held by the Master Trustee and will be available to pay debt service on all Master Trust Bonds.

As long as the amount on deposit in the Debt Service Reserve Account equals the 2003A Debt Service Reserve Requirement, no further deposits will be made to the Debt Service Reserve Account. If the Authority is ever required to withdraw funds from the Debt Service Reserve Account to prevent a default in the payment of debt service on the Bonds and such withdrawal reduces the amount on deposit in the Debt Service Reserve Account to less than the 2003A Debt Service Reserve Requirement, (a “Reserve Deficiency”), the Bond Trustee must notify the Master Trustee of such Reserve Deficiency and the Master Trustee, pursuant to the Master Trust Agreement, will, to the extent of available funds, held in the Master Trust Agreement an amount equal to the Reserve Deficiency in accordance with the provisions of the Master Trust Agreement. See “SECURITY AND SOURCES OF PAYMENT OF THE BONDS—Master Trust Agreement.” In the event that 2003A Program Loan Repayments are sufficient to replenish any Reserve Deficiency, amounts held in the Master Reserve Account equal to such replenishment will, at the written direction of the Authority, be released to the Energy Commission. Any amounts so transferred to the Energy Commission will not serve as security for the Bonds or any other Master Trust Bonds.

### **Surplus Repayments Account and Cash Flow Monitoring**

The Bond Indenture creates the Surplus Repayments Account, which will be held in the custody of the Bond Trustee and maintained in the Special Deposit Fund in the California State Treasury. The Surplus Repayments Account will be funded from amounts remaining in the Loan Repayment Account on each Bond Payment Transfer Date after paying Administrative Expenses (as defined in the Bond Indenture) and after making required transfers to the Debt Service Account and Debt Service Reserve Account. See “APPENDIX B—Summary of Legal Documents—Defined Terms.”

Amounts on deposit in the Surplus Repayments Account will be transferred to the Debt Service Account on any Bond Payment Transfer Date to the extent such amounts are required to pay principal and interest on the 2003A Bonds coming due on such Bond Payment Date. Subject to the foregoing sentence, the Authority will transfer (or will cause the Bond Trustee to transfer) from the Surplus Repayments Account to the Master Trustee, for deposit into the Master Reserve Account, (i) the amount, in such account in excess of the amount necessary to deliver a Cash Flow Certificate, which certificate the Energy Commission covenants to deliver to the Bond Trustee and the Authority on or before each Bond Payment Date, less (ii) any amounts required by the Energy Commission, as stated in a certificate of an Energy Commission Representative, to pay administrative and legal costs related to the Bonds and compliance with the terms of the Secured Loan Agreement, the Master Trust Agreement and the Bond Indenture including, without limitation, implementation of the Program and making of new loans with Bond proceeds.

The Cash Flow Certificate is an Officer’s Certificate of the Energy Commission (a) demonstrating that, for each six-month period ending March 1 and September 1, commencing with the six-month period in which such certificate is delivered, (i) the scheduled payments on the Program Loans



securing a Series of Bonds which will be available to pay debt service due on such Series of Bonds during such six-month period plus (ii) any amounts to remain on deposit in the Surplus Repayments Account (and be applied as specified in the Cash Flow Certificate), together with estimated interest earnings thereon, after any release contemplated by the Cash Flow Certificate, will at least be equal to 110% of the debt service payable on such Series of Bonds in each such six-month period, and (b) if applicable, directing the release of amounts in the Surplus Repayments Account to the Master Trustee for deposit into the Master Reserve Account. In delivering the Cash Flow Certificate, amounts in the Debt Service Reserve Account, together with any releases therefrom or any interest earnings thereon, are disregarded.

As of the date of issuance of the Bonds, the Energy Commission will execute a Cash Flow Certificate demonstrating its ability to satisfy these requirements.

### **Master Trust Agreement**

The Bonds are Master Trust Bonds, and all future bonds issued under the Program are expected to be Master Trust Bonds, secured by the Master Trust Agreement. Because the Bonds constitute the initial series of Master Trust Bonds, as of the date of issuance of the Bonds there will not be any funds on deposit under the Master Trust Agreement.

The Master Reserve Account established under the Master Trust Agreement will be funded from two sources: 1) transfers from the Surplus Repayments Account held by the Bond Trustee, together with interest earnings therein, resulting from loan repayments in excess of scheduled debt service on the related series of Master Trust Bonds; and 2) moneys released from a debt service reserve account for a series of Master Trust Bonds on any Bond Payment Date which are in excess of the Debt Service Reserve Requirements on such date. Transfers to the Master Trustee will be made prior to each applicable Bond Payment Date for each series of Master Trust Bonds. The amounts transferred into the Master Reserve Account will vary with each series of Master Trust Bonds, depending upon the amount of excess loan repayments, scheduled investment earnings, and the applicable Debt Service Reserve Requirement under the related bond indenture.

Moneys transferred to the Master Trustee will be available to provide an additional reserve to make up for any deficiency in any debt service reserve account established for any series of Master Trust Bonds, and to pay debt service on any Master Trust Bonds in the event amounts available under the related bond indenture are insufficient for such purpose, as more fully described below.

If, prior to any Bond Payment Date on Master Trust Bonds, a bond trustee determines that there will be an insufficient amount in the debt service account for such series of Master Trust Bonds to pay the principal and interest on such bonds coming due on the next Bond Payment Date (after first taking into account the interest earnings to be transferred from the debt service reserve account and amounts in the debt service reserve account), the bond trustee will notify the Master Trustee of the amount of any shortfall. No later than the Business Day prior to a Bond Payment Date, the Master Trustee is required to transfer to the bond trustee the amount of any shortfall from available moneys held under the Master Trust Agreement.

If, on any Bond Payment Date, a bond trustee determines that the amount on deposit in the debt service reserve account established for such series of Master Trust Bonds is below the level required by the applicable bond indenture, the bond trustee will notify the Master Trustee of the amount of the Reserve Deficiency. The Master Trustee will, to the extent of available funds in the Master Reserve Account, set aside in trust an amount equal to such Reserve Deficiency.



Within two Business Days following any Bond Payment Date, the Master Trustee will transfer, at the direction of the Authority, the net balance of amounts held in the Master Reserve Account, in excess of any cumulative reserve deficiencies for all series of Master Trust Bonds (“Cumulative Deficiencies”), to the Energy Commission. If and to the extent the bond trustee for any series of Master Trust Bonds certifies to the Master Trustee that any reserve deficiency has been replenished, moneys on deposit in the Master Reserve Account will be released to the Energy Commission to the extent not needed to cure any other reserve deficiency or to such other fund or account held by the Master Trustee under the Master Trust Agreement as may be directed in writing by the Authority.

All amounts held under the Master Trust Agreement will be invested in Permitted Investments, as directed by the Authority in consultation with the Energy Commission.

As of the date of issuance of the Bonds, no money will be on deposit with the Master Trustee.

### **Bonds Limited Obligations**

The Bonds do not constitute an indebtedness or liability of the State or of any political subdivision thereof, other than the Authority, or a pledge of the faith and credit of the State or of any political subdivision, but shall be payable solely from the funds described herein. The Authority has no taxing power. The Bonds do not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any form of taxation therefor, or to make any appropriation for their payment.

## **RISK FACTORS**

This section of the Official Statement describes certain risk factors that may affect the payment of and security for the Bonds. Potential investors should consider, among other matters, these risk factors in connection with any purchase of the Bonds. The following discussion is not meant to present an exhaustive list of the risks associated with the purchase of any Bonds (and other considerations that may be relevant to particular investors) and does not necessarily reflect the relative importance of the various risks. Potential investors are advised to consider the following factors, along with all other information contained or incorporated by reference in this Official Statement, in evaluating whether to purchase the Bonds.

### **Lack of Energy Savings**

Since the 2003A Program Loans securing the Bonds are repayable only from energy savings or other legally available sources, if any 2003A Borrower is unable to achieve energy savings calculated for the applicable repayment period, the loan payment schedule can be renegotiated. There can be no assurance that performance of the 2003A Borrower’s Project will not deteriorate, that energy rates will not decline to a point at which savings are not realized, or that other factors may not result in a loss of savings. Although the 2003A Program Loan Agreements require each 2003A Borrower to report energy savings for each of the three years immediately following completion of the 2003A Borrower’s Project, the Energy Commission reports that only a small percentage of current 2003A Borrowers have complied with this requirement. Such noncompliance, although technically a default under the Loan Agreement, does not carry any other penalty for the 2003A Borrower. The Energy Conservation Assistance Act requires each Program Participant to annually compute the cost of energy saved as a result of the implementation of any Project financed by a Program Loan, in a manner prescribed by the Energy Commission. The Energy Commission does not currently monitor energy savings on an ongoing basis. However at the time of the delivery of the Bonds, the Energy Commission will certify that, based upon its



review of the energy savings computations made by each 2003A Borrower and the Energy Commission at the inception of the 2003A Program Loan, the Energy Commission believes that each 2003A Borrower's Project continues to produce "energy savings" in excess of the annual 2003A Program Loan Repayments.

In addition, the Energy Commission reports that no Program Loan has ever failed to be repaid due to the absence of energy savings. In fact, the Energy Commission reports that since the inception of its Program in 1979, out of approximately 507 loans funded, only \$9,704 has been written off due to two Program Participants' financial difficulties. In addition, the Energy Commission has indicated that it could renegotiate loan terms, to the extent permitted by law, if needed to realize full loan repayment due to reduced energy savings. See "THE PROGRAM—2003A Program Loans."

### **Lack of Financial Covenants and Legal Opinions for 2003A Program Loans**

The Energy Commission has not previously used revenue bonds as a source of funding for Program Loans. Also, the 2003A Program Loans are unsecured obligations of the Borrowers. The standard loan agreements used in connection with the 2003A Program Loan do not include provisions that are frequently part of revenue bond financings in the public finance sector, including a stated priority of an identified source of revenues to be used to repay a 2003A Program Loan (as compared to any other obligations of a 2003A Borrower), or any limitation on additional borrowings by a 2003A Borrower, or any provisions comparable to a "rate covenant." In addition, no legal opinions that the 2003A Program Loans were valid and binding obligations of the 2003A Borrowers were delivered by 2003A Borrowers' counsel (or any other counsel) at the time of the closings of the loans, nor at any time thereafter, nor is Bond Counsel or the Energy Commission Chief Counsel delivering any such opinion in connection with the delivery of the Bonds. However, as described below, the Attorney General has issued an opinion with respect to the validity of the Program Loans under the California Constitution. See "Legal Challenges to Validity of the 2003A Program Loans" immediately below.

### **Legal Challenges to Validity of the 2003A Program Loans**

It is possible that the validity or enforceability of any or all of the 2003A Program Loans could be challenged on the basis that they represent a debt of the borrowing public entity which was entered into without a vote of the electorate. This issue was addressed, at the request of the Energy Commission, by the California Attorney General Opinion No. 84-306 (67 Op. Atty. Gen. 349), dated August 1, 1984. That opinion, based on the Energy Commission's interpretation and application of the statutes governing the Program Loans, concluded that the borrowing of funds by a city, county or school district to implement an energy conservation project pursuant to the Energy Commission's Energy Conservation Assistance Program (Public Resources Code sections 25410-25421) did not require electorate consent under Article XVI, Section 18 of the California Constitution because the energy loans constituted a contingent liability payable solely from savings in energy costs and because the governing body was not empowered to levy taxes for the purpose of making loan payments.

The Attorney General opinion did note that, since the applicable statute required that each borrowing entity "shall repay" the loan, although not through the levying of additional taxes, there remained the question of whether there is an obligation to repay a loan in excess of energy savings with other available funds where the raising of such funds for repayment is not precluded by the California Constitution. The Energy Conservation Assistance Act has since been amended to expressly permit loans to be repaid from other legally available sources as well as from savings in energy costs, while still prohibiting loans from being paid by the levy of additional taxes.



The Energy Commission is not aware of any legal challenge to the validity of the loans financed under its Program.

### **Prepayment of 2003A Program Loans; No Right to Redeem Bonds**

The 2003A Program Loans are prepayable without penalty at any time. If a very substantial portion of the 2003A Program Loans were prepaid, it is possible that, in light of the inability of the Authority to redeem the Bonds, the cash flow from such prepayments, together with investment earnings thereon and other amounts available under the Bond Indenture to pay the Bonds, might be insufficient to pay debt service on the Bonds as it becomes due. In light of the specialized nature of the 2003A Program Loans and the size of the Debt Service Reserve Account, the Authority and the Energy Commission consider this possibility to be remote.

### **Termination of Authority Existence**

As described in “THE AUTHORITY,” the Authority Act contains provisions which may result in termination of the Authority on January 1, 2007. Although any such termination would prevent the Authority from issuing additional series of Master Trust Revenue Bonds, which could affect the amounts held in the Master Reserve Account, any such termination would not directly adversely affect the obligation to pay the principal and interest on the Bonds

## **LITIGATION**

### **The Authority**

To the knowledge of the Authority, there are no actions, suits or proceedings, inquiry or investigation before or by any court or public body pending or threatened against or affecting the Authority (a) challenging or questioning the transactions contemplated by the Purchase Contract among the underwriter of the Bonds, the State Treasurer and the Authority providing for the sale of the Bonds (the “Purchase Contract”), the Bond Indenture, the Master Trust Agreement and the Secured Loan Agreement (the “Authority Financing Documents”), the Bonds, or any other agreement, document or certificate related to such transactions; (b) challenging or questioning the creation, organization, existence or powers of the Authority with respect to the issuance of the Bonds; (c) seeking to enjoin or restrain the issuance, sale and delivery of the Bonds or the collection of any of the 2003A Program Loan Repayments or the pledge thereof or of the 2003A Program Loan Agreements; (d) in any way questioning or affecting any of the rights, powers, duties or obligations of the Authority with respect to the 2003A Program Loan Repayments or the 2003A Program Loan Agreements; (e) in any way questioning or affecting any authority for the issuance of the Bonds or validity or enforceability of the Bonds or the Authority Financing Documents; or (f) in any way questioning or affecting any other agreement or instrument to which the Authority is a party.

### **The Energy Commission**

The Energy Commission will provide a certificate at the time of issuance of the Bonds stating that, to the best of its knowledge and based upon a reasonable investigation, (i) there are no actions, suits or proceedings, which have been served on the Energy Commission or are otherwise pending or threatened against the Energy Commission (a) to restrain or enjoin the issuance or delivery of any of the Bonds or the collection of 2003A Program Loan Repayments pledged under Secured Loan Agreement or any payments to be made or assets to be pledged by the Energy Commission pursuant the Secured Loan Agreement or the Master Trust Agreement; (b) in any way contesting or affecting the issuance or delivery



of the Bonds or the validity, when executed and delivered, of the Bonds, the Bond Indenture, the Purchase Contract or the Letter of Representations executed by the Energy Commission and attached to the Purchase Contract, the Master Trust Agreement, the Secured Loan Agreement, the Continuing Disclosure Agreement (described below in “CONTINUING DISCLOSURE”) and the Tax Certificate and Agreement between the Authority and the Energy Commission executed in connection with issuance of the Bonds (collectively, the “Energy Commission Financing Documents”) or the collection of 2003A Program Loan Repayments pledged under the Secured Loan Agreement or the 2003A Collateral pledged under the Bond Indenture; or (c) in any way contesting the existence or powers of the Energy Commission to operate the Program, and (ii) except as described in this Official Statement, there are no actions, suits or proceedings of any nature which have been served on the Energy Commission or are otherwise pending or threatened against the Energy Commission which, if determined adversely to it, might materially adversely affect the financial condition, assets or properties of the Energy Commission.

The Energy Commission has been informed by an individual that as a result of a dispute between that individual and the staff of the Energy Commission regarding the Energy Commission’s duties under the California Public Records Act, he intends to file a lawsuit seeking approximately \$31.7 million in damages. In addition, a case was recently filed against the Energy Commission alleging libel and slander seeking approximately \$20 million in damages, and the case was dismissed with leave to refile. Although the complaint alleged no clear facts, it appeared that the complaint involved a pollution control invention. The Energy Commission’s assessment of the possible lawsuit and the dismissed lawsuit is that they are frivolous and have no merit, and that the Energy Commission has no liability for damages. The factual bases of both matters are unrelated to the Bonds, the Program and the 2003A Program Loan Agreements.

## **TAX MATTERS**

### **General**

In the opinion of Sidley Austin Brown & Wood LLP, San Francisco, California, Bond Counsel, based on existing statutes, regulations, rulings and judicial decisions and assuming compliance with certain covenants in the Bond Indenture, the Secured Loan Agreement, the Master Trust Agreement and other documents pertaining to the Bonds and requirements of the Internal Revenue Code of 1986, as amended (the “Code”), regarding the use, expenditure and investment of proceeds of the Bonds and the timely payment of certain investment earnings to the United States, interest on the Bonds is not includable in the gross income of the owners of the Bonds for federal income tax purposes. Failure to comply with such covenants and requirements may cause interest on the Bonds to be included in gross income retroactively to the date of issuance of the Bonds.

In the further opinion of Bond Counsel, interest on the Bonds is not treated as an item of tax preference in calculating federal alternative minimum taxable income of individuals and corporations. Interest on the Bonds, however, is included as an adjustment in the calculation of federal corporate alternative minimum taxable income and may therefore affect a corporation’s alternative minimum tax liability.

Ownership of, or the receipt of interest on, tax-exempt obligations may result in collateral tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, certain foreign corporations doing business in the United States, certain S corporations with excess passive income, individual recipients of Social Security or Railroad Retirement benefits, taxpayers that may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations and taxpayers who may be eligible for the earned income tax credit. Bond Counsel expresses no opinion with respect to any collateral tax consequences and, accordingly,



prospective purchasers of Bonds should consult their tax advisors as to the applicability of any collateral tax consequences.

Certain requirements and procedures contained or referred to in the Bond Indenture, the Secured Loan Agreement, the Master Trust Agreement or other documents pertaining to the Bonds may be changed, and certain actions may be taken, under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of counsel nationally recognized in the area of tax-exempt obligations. Bond Counsel expresses no opinion as to the exclusion of interest on the Bonds from gross income for federal income tax purposes on and after the date on which any such change occurs or action is taken upon the advice or approval of counsel other than Sidley Austin Brown & Wood LLP.

Legislation affecting municipal obligations is continually being considered by the United States Congress. There can be no assurance that legislation enacted after the date of issuance of the Bonds will not have an adverse effect on the tax-exempt status of the Bonds. Legislation or regulatory actions and proposals may also affect the economic value of the tax exemption or the market price of the Bonds.

In the further opinion of Bond Counsel, interest on the Bonds is exempt from personal income taxes imposed by the State of California.

A copy of the proposed form of opinion of Bond Counsel is attached hereto as APPENDIX C.

### **Original Issue Discount**

The initial public offering price of certain of the Bonds (collectively, the “Discount Bonds”) is less than the principal amount of the Discount Bonds. The difference between the principal amount of a Discount Bond and its initial public offering price is original issue discount. Original issue discount on a Discount Bond accrues over the term of such Discount Bond at a constant interest rate. To the extent it has accrued, original issue discount on a Discount Bond is treated as interest excludable from gross income for federal income tax purposes under the conditions and limitations described above. The amount of original issue discount that accrues on a Discount Bond in each year is not an item of tax preference for purposes of calculating federal alternative minimum taxable income, but is included as an adjustment in the calculation of federal corporate alternative minimum taxable income and may therefore affect a corporation’s alternative minimum tax liability. Additionally, such accrued original issue discount is taken into account in determining the distribution requirements of certain regulated investment companies. Consequently, owners of Discount Bonds should be aware that the accrual of original issue discount in each year may result in an alternative minimum tax liability, additional distribution requirements or other collateral federal income tax consequences although the owner may not have received cash in such year.

The accrual of original issue discount on a Discount Bond will increase the owner’s adjusted basis in such Discount Bond. This will affect the amount of taxable gain or loss realized by the owner of the Discount Bond upon the redemption, sale or other disposition of such Discount Bond. The effect of the accrual of original issue discount on the federal income tax consequences of a redemption, sale or other disposition of a Discount Bond that is not purchased at the initial public offering price may be determined according to rules that differ from those described above. Owners of Discount Bonds should consult their tax advisors with respect to the precise determination for federal income tax purposes of the amount of original issue discount that properly accrues with respect to the Discount Bonds, other federal income tax consequences of owning and disposing of the Discount Bonds and any state and local tax consequences of owning and disposing of the Discount Bonds.



## **Premium Bonds**

Certain of the Bonds may be purchased in the initial offering for an amount in excess of their principal amount (hereinafter, the “Premium Bonds”). The excess of the tax basis of a purchaser of a Premium Bond (other than a purchaser who holds a Premium Bond as inventory, stock in trade or for sale to customers in the ordinary course of business) over the principal amount of such Premium Bond is “bond premium.” Bond premium is amortized for federal income tax purposes over the term of a Premium Bond based on the purchaser’s yield to maturity in the Premium Bond. A purchaser of a Premium Bond is required to decrease his or her adjusted basis in such Premium Bond by the amount of bond premium attributable to each taxable year in which such purchaser holds such Premium Bond. The amount of bond premium attributable to a taxable year is not deductible for federal income tax purposes. Purchasers of Premium Bonds should consult their tax advisors with respect to the precise determination for federal income tax purposes of the amount of bond premium attributable to each taxable year and the effect of bond premium on the sale or other disposition of a Premium Bond, and with respect to the state and local tax consequences of owning and disposing of a Premium Bond.

## **LEGAL MATTERS**

Certain legal matters incident to the authorization, issuance, sale and delivery of the Bonds are subject to the approval of Sidley Austin Brown & Wood LLP, San Francisco, California, Bond Counsel, whose approving legal opinion will be delivered with the Bonds in substantially the form of APPENDIX C hereto. Certain legal matters will be passed upon for the Energy Commission by its Chief Counsel, William M. Chamberlain, Esq. Certain other legal matters will be passed for the Underwriter by Orrick, Herrington & Sutcliffe LLP, San Francisco, California, Counsel to the Underwriter.

No legal opinions that the 2003A Program Loans were valid and binding obligations of the Borrowers were delivered by 2003A Borrowers’ counsel (or any other counsel) at the time of the closings of the loans, nor at any time thereafter, nor is Bond Counsel or the Energy Commission Chief Counsel delivering any such opinion in connection with the delivery of the Bonds.

The remedies available to the Bond Trustee, to the Authority or to the owners of the Bonds upon an Event of Default under the Bond Indenture or under the terms of the 2003A Program Loan Agreements or the Secured Loan Agreement are in many respects dependent upon judicial actions which are often subject to discretion and delay. Under existing constitutional and statutory law and judicial decisions, including specifically Title 11 of the United States Code (the United States Bankruptcy Code), the remedies provided in the Bond Indenture, the 2003A Program Loan Agreements or the Secured Loan Agreement may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally.

The various legal opinions to be delivered concurrently with the delivery of the Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or guarantor of that expression of professional judgment, of the transaction opined upon, or of the future performance of parties to such transaction, nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.



## **RATING**

Moody's Investors Service is expected to assign the Bonds a rating of "Aa3." Any desired explanation of the significance of such rating should be obtained from such rating agency. There is no assurance that such "Aa3" rating will be maintained for any given period of time or that it will not be lowered or withdrawn entirely if, in the judgment of the rating agency, circumstances so warrant. The Underwriter has undertaken no responsibility either to bring to the attention of the Owners of the Bonds any proposed revision or withdrawal of the rating on the Bonds or to oppose any such proposed revision or withdrawal. Any downward revision or withdrawal of such rating could have an adverse effect on the market price of the Bonds.

## **CONTINUING DISCLOSURE**

Because the Bonds are limited obligations of the Authority, payable solely from amounts received from the Energy Commission, financial or operating data concerning the Authority is not material to an evaluation of the offering of the Bonds or to any decision to purchase, hold or sell the Bonds. Accordingly, the Authority will not provide any such information. The Energy Commission has undertaken all responsibilities for any continuing disclosure to owners of the Bonds, as described below, and the Authority shall have no liability to the Owners of the Bonds or any other person with respect to Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 by the Securities and Exchange Commission (the "Rule").

The Energy Commission has covenanted for the benefit of the holders and beneficial owners of the Bonds to provide certain financial information and operating data (the "Energy Commission Report") by not later than April 1 of each year, commencing with the report for fiscal year 2002-03, to be filed on or before April 1, 2004, and ending on the final maturity date of the Bonds. The Energy Commission Report will be filed by the Energy Commission with each Nationally Recognized Municipal Securities Information Repository and the Authority. A form of Continuing Disclosure Agreement specifying the nature of the information to be contained in the Energy Commission Report or the notices of material events is set forth in APPENDIX D hereto. These covenants have been made in order to assist the Underwriter in complying with S.E.C. Rule 15c2-12(b)(5). The Energy Commission has not previously made any undertakings with regard to such Rule to provide annual reports or notices of material events.

In addition, if at the time of any release, substitution or replacement of a 2003A Program Loan pursuant to the Secured Loan Agreement, (i) any 2003A Borrower shall be obligated to make aggregate debt service payments on its 2003A Program Loans in an amount equal to 10% or more of the aggregate annual debt service on the Bonds, or (ii) if any the 2003A Borrower's aggregate 2003A Program Loans represent more than 10% of the aggregate principal amount of all 2003A Program Loans, then such a 2003A Borrower will be a "Material Participant" as defined in the Secured Loan Agreement. The Commission has covenanted in the Secured Loan Agreement to require any Material Participant to enter into a continuing disclosure agreement with respect to the Bonds in accordance with the Rule and to file annual reports and notices of certain events with information repositories in accordance with the Rule. See "APPENDIX B—Summary of Legal Documents—Summary of Certain Provisions of the Secured Loan Agreement—Continuing Disclosure." There are currently no 2003A Borrowers who are Material Participants.



## **UNDERWRITING**

The Underwriter has agreed, subject to certain customary conditions precedent to closing, to purchase the Bonds from the Authority at a purchase price of \$29,022,225.10 (which is equal to the aggregate par amount of the Bonds, plus a net original issue premium of \$1,310,685.10, less an underwriter's discount of \$293,460.00), plus accrued interest. The Bonds may be offered and sold to certain dealers at prices lower than such public offering price, and such public offering price may be changed, from time to time, by the Underwriter.

## **FINANCIAL ADVISORS**

Public Financial Management, San Francisco, California, serves as Financial Advisor to the Authority. Lamont Financial Services Corporation, Los Angeles, California serves as Financial Advisor to the Energy Commission. The Financial Advisors have assisted in various matters relating to the planning, structure and issuance of the Bonds.

## **MISCELLANEOUS**

The references, excerpts and summaries of all documents referred to herein do not purport to be complete statements of the provisions of such documents, and reference is made to all such documents for full and complete statements of all matters of fact relating to the Bonds, the security for the payment of the Bonds and the rights of the owners thereof. During the period of the offering, copies of drafts of such documents may be examined at the office of the Underwriter. Following delivery of the Bonds, copies of such documents may be examined at the principal corporate trust office of the Bond Trustee. The information contained in this Official Statement has been compiled from official and other sources deemed to be reliable, and while not guaranteed as to completeness or accuracy, is believed to be correct as of this date.

Any statement made in this Official Statement involving matters of opinion or of estimates, whether or not expressly so stated, are set forth as such and not as representations of fact, and no representation is made that any of the estimates will be realized. The information and expressions of opinion herein are subject to change without notice and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the information presented herein since the date hereof. This Official Statement is not to be construed as a contract or agreement between the Authority, the Energy Commission, the 2003A Borrowers, the Bond Trustee, the Master Trustee or the Underwriter and the purchasers or Owners of any Bonds.



The delivery of this Official Statement has been duly authorized by the Authority.

CALIFORNIA CONSUMER POWER AND  
CONSERVATION FINANCING AUTHORITY

By: /s/ S. David Freeman  
Chair

This Official Statement has been reviewed and approved by the Energy Commission. Concurrent with the delivery of the Bonds, the Energy Commission will furnish a certificate executed on its behalf by its Executive Director to the effect that this Official Statement (excluding any information regarding the Authority or DTC) does not contain any untrue statement of a material fact or omit to state a material fact necessary to make statements herein, in the light of the circumstances under which they were made, not misleading.

CALIFORNIA ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT  
COMMISSION

By: /s/ Robert L. Therkelsen  
Executive Director



## APPENDIX A

### INFORMATION ON INITIAL 2003A PROGRAM LOANS

The following table shows the outstanding principal amount of existing 2003A Program Loans as of January 28, 2003.\* For those 2003A Program Loans which are not yet in repayment, the outstanding principal amounts shown represent amounts disbursed to date.

The Energy Commission may release, substitute or modify any of the 2003A Program Loans in accordance with the Secured Loan Agreement. See “APPENDIX B—Summary of Legal Documents—Summary of Certain Provisions of the Secured Loan Agreement—Release, Substitution and Modification of 2003A Program Loans.”

#### Listing of Initial 2003A Program Loans

Initial 2003A Borrower	Loan Number	Outstanding Principal Amount	Interest Rate	Final Maturity Date <sup>(1)</sup>
West Hills Community College District	555-000 . . .	\$ 46,660	8.32%	06/22/08
Carmel Unified School District	140-002-ECA	261,427	6.60	12/22/07
Fall River Joint Unified School District	746-000-ECA	139,535	6.60	06/22/08
Siskiyou Joint Community College District	742-000-ECA	44,313	6.60	12/22/07
Woodlake Union High School	747-000-ECA	41,308	6.60	12/22/05
Gridley Union High School District	274-001-ECA	39,019	6.60	12/22/05
Conejo Valley Unified School District	336-004-ECA	35,752	6.60	12/22/03
Gridley Union School District	261-001-ECA	21,623	6.60	06/22/04
Lowell Joint School District	576-003-ECA	20,894	6.60	06/22/07
Conejo Valley Unified School District	336-005-ECA	8,021	6.60	12/22/04
Conejo Valley Unified School District	336-007-ECA	5,000	6.60	12/22/03
Conejo Valley Unified School District	336-006-ECA	4,809	6.60	12/22/03
Clear Creek Elementary School District	745-000-ECA	4,448	6.60	06/22/05
Penryn Elementary School District	749-000-ECA	4,356	6.60	12/22/04
Happy Valley Elementary School District	733-000-ECA	1,719	6.60	12/22/03
County of Alameda	810-000-ECA	745,277	6.00	12/22/10
City of Palm Springs	808-000-ECA	183,658	6.00	06/22/13
City of Pasadena	058-003-ECA	61,305	6.00	12/22/04
City of Sebastopol	811-000-ECA	8,750	6.00	06/22/05
University of California, Santa Barbara	777-000-ECA	391,122	5.90	06/22/11
County of El Dorado	753-000-ECA	224,032	5.90	06/22/09
City of South Gate	379-002-ECA	172,358	5.90	12/22/08
San Juan Water District	780-000-ECA	44,505	5.90	06/22/12
City of Rio Vista	754-000-ECA	34,167	5.90	06/22/09
City of Woodland	661-001-ECA	31,588	5.90	12/22/03
City of Redding	809-000-ECA	334,525	5.40	06/22/12
City of Berkeley	037-004-ECA	178,160	5.40	06/22/08

<sup>(1)</sup> Semiannual loan repayment dates are June 22 and December 22 of each year.

\* The 2003A Program Loan information in this Appendix is based on various files maintained by the Energy Commission which are updated periodically. Therefore, additional draws, prepayments or delinquencies may have occurred which are not reflected in this Appendix.



<b>Initial 2003A Borrower</b>	<b>Loan Number</b>	<b>Outstanding Principal Amount</b>	<b>Interest Rate</b>	<b>Final Maturity Date<sup>(1)</sup></b>
City of Redding	809-001-ECA	\$ 141,424	5.40%	6/22/13
City of South Gate	379-003-ECA	96,969	5.40	12/22/10
Exeter Public Schools	282-002-ECA	72,939	4.72	06/22/07
Lake Elementary School District	707-000-ECA	7,913	4.72	12/22/04
Plaza Elementary School District	708-000-ECA	4,319	4.72	12/22/04
City of Corona	224-002-ECA	44,594	4.68	12/22/03
City of Monterey	678-000-ECA	13,477	4.68	06/22/03
College of the Canyons <sup>(2)</sup>	021-001-ECA	631,783	4.00	06/22/14
Chabot-Las Positas Community College District <sup>(2)</sup>	650-002-ECA	104,544	4.00	12/22/08
County of Merced	833-000-ECX	1,749,196	3.00	06/22/13
Los Angeles Community College District	839-000-ECX	1,504,834	3.00	06/22/11
City of Redlands	099-001-ECX	1,500,000	3.00	06/22/09
State Center Community College District	856-000-ECX	1,183,864	3.00	06/22/10
Southwestern Community College District	840-000-ECX	1,136,037	3.00	06/22/13
County of Alameda	810-001-ECX	1,031,169	3.00	06/22/13
Antelope Valley Community College District	836-000-ECX	998,321	3.00	06/22/11
City and County of SF-Hetch Hetchy W&P	821-000-ECX	970,626	3.00	12/22/10
County of Solano	824-000-ECX	882,597	3.00	06/22/09
Capistrano Unified School District	820-001-ECX	823,780	3.00	06/22/11
County of Orange	842-000-ECX	805,117	3.00	12/22/09
Mt. San Antonio College	829-000-ECX	773,557	3.00	06/22/08
Del Mar Union School District	818-000-ECX	657,189	3.00	06/22/11
City of Manteca	828-001-ECX	598,611	3.00	06/22/10
County of Orange	842-001-ECX	598,042	3.00	12/22/08
Mt. San Antonio College	829-001-ECX	593,641	3.00	06/22/12
City of San Carlos	815-000-ECX	577,972	3.00	06/22/12
Torrance Unified School District	844-000-ECX	433,730	3.00	06/22/13
County of Riverside	852-000-ECX	411,719	3.00	12/22/04
Contra Costa County	477-001-ECX	354,990	3.00	06/22/10
Clovis Unified School District	097-012-ECX	340,523	3.00	12/22/07
Contra Costa County	477-002-ECX	287,095	3.00	06/22/09
Piner-Olivet Union School District	865-000-ECX	261,930	3.00	06/22/14
City of Culver City	853-000-ECX	252,269	3.00	12/22/06
City of Fresno Water Division	843-000-ECX	237,405	3.00	12/22/05
Kerman Unified School District	262-001-ECX	235,021	3.00	12/22/10
City of Redlands	099-002-ECX	221,572	3.00	12/22/06
City of San Buenaventura	823-000-ECX	216,817	3.00	06/22/06
Apple Valley Unified School District	831-000-ECX	180,522	3.00	12/22/09
City of Modesto	173-003-ECX	173,692	3.00	06/22/07
City of Westlake Village	822-000-ECX	163,551	3.00	12/22/09
Capistrano Unified School District	820-000-ECX	150,418	3.00	12/22/08
City of Bellflower	841-000-ECX	128,502	3.00	12/22/06
Middletown Unified School District	837-000-ECX	116,230	3.00	06/22/13
City of Auburn	826-000-ECX	106,723	3.00	12/22/11
Sierra Joint Community College District	835-001-ECX	104,838	3.00	06/22/09
Barstow Unified School District	859-000-ECX	99,499	3.00	12/22/05

<sup>(1)</sup> Semiannual loan repayment dates are June 22 and December 22 of each year.

<sup>(2)</sup> Not yet in repayment because loan amounts are still being disbursed. Final maturity date is estimated, and principal may increase as funds are disbursed.



<b>Initial 2003A Borrower</b>	<b>Loan Number</b>	<b>Outstanding Principal Amount</b>	<b>Interest Rate</b>	<b>Final Maturity Date<sup>(1)</sup></b>
Sutter Extension Water District	861-000-ECX	\$ 90,354	3.00%	06/22/13
County of Mendocino	816-000-ECX	81,536	3.00	12/22/07
Town of San Anselmo	546-001-ECX	78,690	3.00	12/22/10
County of Humboldt	862-000-ECA	66,990	3.00	12/22/11
City of El Centro	814-000-ECX	62,370	3.00	06/22/07
Antelope Valley Community College District	836-001-ECX	54,882	3.00	12/22/08
Cutten Elementary School District	866-000-ECA	45,962	3.00	06/22/10
City of Napa	854-000-ECX	34,449	3.00	12/22/04
City of Sausalito	838-000-ECX	28,394	3.00	06/22/13
City of San Juan Capistrano	813-000-ECX	6,148	3.00	06/22/03
City of Manteca <sup>(2)</sup>	828-000-ECX	1,639,153	3.00	06/22/11
City and County of San Francisco <sup>(2)</sup>	817-000-ECX	1,063,202	3.00	06/22/10
Sierra Joint Community College District <sup>(2)</sup>	835-000-ECX	1,052,048	3.00	06/22/11
Antelope Community College District <sup>(2)</sup>	836-002-ECX	372,900	3.00	06/22/13
City of Oakland <sup>(2)</sup>	610-002-ECX	237,617	3.00	06/22/11
City of Santa Rosa <sup>(2)</sup>	101-001-ECX	887,640	3.00	06/22/09
City and County of San Francisco <sup>(2)</sup>	817-001-ECX	729,018	3.00	06/22/08
City of Indio <sup>(2)</sup>	855-000-ECX	144,309	3.00	06/22/09
Rio Linda Union School District <sup>(2)</sup>	857-000-ECX	519,688	3.00	06/22/11
County of Humboldt <sup>(2)</sup>	862-001-ECA	40,063	3.00	06/22/08

<sup>(1)</sup> Semiannual loan repayment dates are June 22 and December 22 of each year.

<sup>(2)</sup> Not yet in repayment because loan amounts are still being disbursed. Final maturity date is estimated, and principal may increase as funds are disbursed.



## **APPENDIX B**

### **SUMMARY OF LEGAL DOCUMENTS**

The following is a summary of defined terms and certain provisions of the Secured Loan Agreement, dated as of April 1, 2003, between the Energy Commission and the Authority; the Bond Indenture, dated as of April 1, 2003, between the Authority and the Treasurer of the State of California, as Bond Trustee; and the Master Trust Agreement, dated as of April 1, 2003, among the Authority, the Treasurer of the State of California, as Master Trustee; and the Energy Commission. This summary does not purport to be complete or comprehensive, and this summary is qualified in its entirety by reference to these documents, copies of which are available from the Bond Trustee.



## SUMMARY OF LEGAL DOCUMENTS

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## DEFINED TERMS

The following defined terms are used in one or more of the Secured Loan Agreement, the Bond Indenture and the Master Trust Agreement.

“2003A Bonds” means the California Consumer Power and Conservation Financing Authority Energy Efficiency Master Trust Revenue Bonds, Series 2003A, in the aggregate principal amount of \$28,005,000, issued, authenticated and delivered under and pursuant to the 2003A Bond Indenture.

“2003A Bond Indenture” means the Bond Indenture, dated as of April 1, 2003, by and between the Authority and the State Treasurer, as Bond Trustee, as amended or supplemented from time to time.

“2003A Borrower” means a Borrower under a 2003A Program Loan Agreement.

“2003A Collateral” means (i) all right, title and interest in and to the 2003A Program Loans, including all 2003A Program Loan Repayments and all other proceeds arising from the 2003A Program Loans, (ii) all amounts held from time to time in the Loan Repayment Account, the Debt Service Account, the Debt Service Reserve Account and the Surplus Repayments Account established under the 2003A Bond Indenture, and (iii) all amounts held under the Master Trust Agreement which are available for payment of the 2003A Bonds.

“2003A Debt Service Reserve Requirement” means, initially, the amount of \$6,000,000 and thereafter, as of the date of calculation, an amount equal to the greater of (i) the maximum debt service on the 2003A Bonds payable in any fiscal year and (ii) 20% of the principal amount of the 2003A Bonds Outstanding.

“2003A Program Loan Agreements” means all existing and future Program Loan Agreements evidencing the 2003A Program Loans, together with all extensions, renewals, modifications or replacements thereof, as permitted in the 2003 Secured Loan Agreement.

“2003A Program Loan Repayment” means a loan repayment under a 2003A Program Loan.

“2003A Program Loans” means the Program Loans made under the Program and described in Exhibit A to the 2003A Secured Loan Agreement, as such Exhibit A may be revised pursuant to the 2003A Secured Loan Agreement.

“2003A Promissory Notes” means any note which has been signed or will be signed by a Borrower which evidences a 2003A Program Loan from the Energy Commission pursuant to a 2003A Program Loan Agreement.

“2003A Secured Loan Agreement” means the 2003A Secured Loan Agreement, dated as of April 1, 2003, by and between the Authority and the Energy Commission, as amended or supplemented from time to time.

“Additional Payments” means any additional payments designated as such in a Secured Loan Agreement.

“Administrative Expenses” means, with respect to any Series of Bonds,

(a) *Bond Trustee Fees and Professional Fees.* All reasonable fees, charges and expenses of the Bond Trustee and any authenticating agents, paying agents, registrars, dissemination



agents, counsel, accountants, rebate analysts or other Persons employed by the Bond Trustee under the related Bond Indenture;

(b) *Advances By Bond Trustee.* The amount of all advances of funds made by the Bond Trustee under the provisions of the related Bond Indenture, with interest thereon at the prime rate announced from time to time by the Bond Trustee;

(c) *Arbitrage Rebate Payments.* All rebate payments required under Section 148(f) of the Internal Revenue Code with respect to a Series of Bonds pursuant to the related Tax Agreement; and

(d) *Costs of Enforcement.* In the event the Bond Trustee employs attorneys or incurs other fees, charges or expenses for the collection of required payments or the enforcement of performance or observance of any obligation or agreement on the part of the Authority contained in the related Bond Indenture, the reasonable fees, charges and expenses of such attorneys and such other fees, charges and expenses so incurred by the Bond Trustee, as well as the costs to indemnify the Bond Trustee and its respective members, directors, officers, employees and agents from and against, all costs, expenses and charges, including reasonable counsel fees, incurred for the collection of payments due or for the enforcement or performance or observance of any covenant or agreement of the Authority under the related Bond Indenture; provided that such costs of enforcement shall be payable solely from the 2003A Collateral.

“Authority” means the California Consumer Power and Conservation Financing Authority, an authority and public instrumentality of the State of California, or any board, agency, authority, political subdivision, governmental unit, department or officer succeeding to the principal functions thereof, as such functions pertain to this Bond financing, or to whom the powers conferred upon the Authority by the Authority Act shall be given by law.

“Authority Act” means California Public Utilities Code Division 1.5 (Sections 3300-3384), as amended from time to time.

“Authority Documents” means, with respect to any Series of Bonds, the Secured Loan Agreement and the Bond Indenture, together with the Master Trust Agreement.

“Authority Representative” means (a) the Chair of the Authority or its Chief Executive Officer, (b) such other person or persons at the time designated to act on behalf of the Authority in matters relating to the Master Trust Agreement and/or any Bond Indenture as evidenced by a written certificate furnished by the Authority to the Master Trustee or Bond Trustee, as applicable, containing the specimen signature of such person or persons and signed on behalf of the Authority by its Chair or its Chief Executive Officer, or (c) any other duly authorized officer of the Authority whose authority to execute any particular instrument or take a particular action under the Master Trust Agreement and/or any Bond Indenture shall be evidenced to the satisfaction of the Master Trustee or the Bond Trustee, as applicable.

“Authority Retained Rights” means the rights of the Authority to receive its fees and costs under the related Secured Loan Agreement.

“Bond” or “Bonds” means any bond or bonds or all the bonds, as the case may be, of the Authority, in one or more series, relating to the Program, issued and secured pursuant to one or more Bond Indentures and further secured under the Master Trust Agreement.



“Bond Counsel” means Sidley Austin Brown & Wood LLP, San Francisco, California, or other counsel selected by the Authority and satisfactory to the Master Trustee and nationally recognized as experienced in matters relating to bonds issued by states and their political subdivisions.

“Bond Indenture,” with respect to each Series of Bonds, means the Bond Indenture or other similar document between the Authority and a Bond Trustee, pursuant to which a Series of Bonds is issued and delivered.

“Bond Payment Date” means each March 1<sup>st</sup> and September 1<sup>st</sup> of each year, commencing on the date specified in the related Bond Indenture.

“Bond Payment Transfer Date” means the day that is fifteen (15) days prior to a Bond Payment Date.

“Bond Trustee,” with respect to each Series of Bonds, means the trustee named under the related Bond Indenture in its capacity as such trustee.

“Borrower” means any eligible school, hospital, public care institution, unit of local government or other eligible entity which has signed a Program Loan Agreement with the Energy Commission to finance a Project under the Program and whose participation in the Program does not adversely affect the exclusion from federal income tax of interest on the Bonds.

“Business Day” means a day other than (a) a Saturday, Sunday, State holiday or legal holiday, or (b) a day on which banks located in any city in which the principal corporate trust office or designated payment office of the Master Trustee or the Bond Trustee is located are required or authorized by law to remain closed.

“Cash Flow Certificate” means an Officer’s Certificate of the Energy Commission (a) demonstrating that for each six-month period ending March 1 and September 1, commencing with the six-month period in which such certificate is delivered, (i) the scheduled payments on the Program Loans securing a Series of Bonds which will be available to pay debt service due on such Series of Bonds during such six-month period plus (ii) any amounts to remain on deposit in the Surplus Repayments Account (and be applied as specified in the Cash Flow Certificate), together with estimated interest earnings thereon, after any release contemplated by the Cash Flow Certificate, will at least be equal to 110% of the debt service payable on such Series of Bonds in each such six-month period, and (b) if applicable, directing the release of amounts in the Surplus Repayments Account to the Master Trustee for deposit into the Master Reserve Account. In delivering the Cash Flow Certificate, amounts in the Debt Service Reserve Account, together with any releases therefrom or any interest earnings thereon, are disregarded.

“Collateral” means the Program Loans and funds and accounts pledged to the payment of a Secured Loan.

“Continuing Disclosure Agreement” means a Continuing Disclosure Agreement relating to a Series of Bonds, among the Energy Commission, the Bond Trustee and, if applicable, each Material Participant, as defined therein, as from time to time amended in accordance with the provisions thereof.

“Cost of Issuance Account” means the Cost of Issuance Account created under a Bond Indenture.



“Costs of Issuance” means issuance costs, including but not limited to the following:

- (a) Underwriter’s spread (whether realized directly or derived through purchase of the Bonds at a discount below the price at which they are expected to be sold to the public);
- (b) Counsel fees (including bond counsel, underwriter’s counsel, Authority’s counsel, Energy Commission’s Counsel and any other specialized counsel fees incurred in connection with the borrowing);
- (c) Financial advisor fees of any financial advisor to the Authority and financial advisor to the Energy Commission incurred in connection with the issuance of the Bonds;
- (d) Rating agency fees;
- (e) Trustee and paying agent fees;
- (f) Accountant fees and other expenses related to issuance of the Bonds;
- (g) Printing costs (for the Bonds and of the preliminary and final Official Statement relating to the Bonds); and
- (h) Fees and expenses of the Authority and the Energy Commission incurred in connection with the issuance of the Bonds.

“Cumulative Deficiency” means, as the date of determination, the cumulative amount of all Deficiencies in all Debt Service Reserve Accounts for all Series of Bonds, as such amounts are certified by each Bond Trustee to the Master Trustee.

“Date of Delivery” means the date any Series of Bonds are purchased and delivered to the Original Purchaser.

“Debt Service Account” means the account by that name established in the custody of the Bond Trustee by a Bond Indenture.

“Debt Service Reserve Account” means the account by that name established in the custody of the Bond Trustee by a Bond Indenture.

“Debt Service Reserve Requirement” means the requirement so established under any Bond Indenture with respect to any Debt Service Reserve Account for any Series of Bonds.

“Deficiency” means, as of the date of determination, and with respect to any Series of Bonds, the amount, if any, by which the Debt Service Reserve Requirement for such Bonds exceeds the amount on deposit in the Debt Service Reserve Account for such Bonds.

“Energy Commission” means the California Energy Resources Conservation and Development Commission, a commission of the State of California, or any board, agency, authority, political subdivision, governmental unit, department or officer succeeding to the principal functions thereof, as such functions pertain to this Bond financing, or to whom the powers conferred upon the Energy Commission by the Energy Conservation Assistance Act shall be given by law.



“Energy Commission Documents” means, with respect to any Series of Bonds, the Secured Loan Agreement, the Master Trust Agreement, the Continuing Disclosure Agreement, and the Program Loan Agreements.

“Energy Commission Representative” means (a) the Chair or Vice Chair of the Energy Commission, or its Executive Director, (b) such other person or persons at the time designated to act on behalf of the Energy Commission in matters relating to the Master Trust Agreement and/or any Secured Loan Agreement as evidenced by a written certificate furnished by the Energy Commission to the Master Trustee or Bond Trustee, as applicable, containing the specimen signature of such person or persons and signed on behalf of the Energy Commission by its Chair or Vice Chair, or its Executive Director, or (c) any other duly authorized officer of the Energy Commission whose authority to execute any particular instrument or take a particular action under the Master Trust Agreement and/or any Secured Loan Agreement shall be evidenced to the satisfaction of the Master Trustee or the Authority, as applicable.

“Energy Commission Retained Rights” means the right to obtain the release or modification of any Program Loan but only to the extent permitted by a Secured Loan Agreement.

“Energy Conservation Assistance Account” means the account created pursuant to the Energy Conservation Assistance Act for the purpose of providing grants and loans for energy efficiency projects in accordance with the Energy Conservation Assistance Act.

“Energy Conservation Assistance Act” means the Energy Conservation Assistance Act of 1979, California Public Resource Code Division 15, Chapter 5.2 (Sections 25410-25421), as amended from time to time.

“Government Obligations” means the following:

(a) bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed by, the United States of America; and

(b) evidences of direct ownership of a proportionate or individual interest in future interest or principal payments on specified direct obligations of, or obligations on which the full and timely payment of the principal and interest is unconditionally guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian in form and substance satisfactory to the Bond Trustee and/or the Master Trustee.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, and, when appropriate, any statutory predecessor or successor thereto, and all applicable regulations (whether proposed, temporary or final) thereunder and any applicable official rulings, announcements, notices, procedures and judicial determinations relating to the foregoing.

“Loan Repayment Account” means the Loan Repayment Account by that name established in the custody of the Bond Trustee by a Bond Indenture.

“Local Jurisdiction Energy Assistance Act” means the energy assistance provisions in California Public Resources Code Division 15, Chapter 5.4 (Sections 25440-25449.4), as amended from time to time.



“Local Jurisdiction Energy Assistance Account” means the account created pursuant to the Local Jurisdiction Energy Assistance Act for the purpose of providing loans to local jurisdictions for energy efficiency projects in accordance with the Local Jurisdiction Energy Assistance Act.

“Master Rebate Account” means the Master Rebate Account established pursuant to the Master Trust Agreement.

“Master Trust Agreement” means the Master Trust Agreement, dated as of April 1, 2003 by and between the Authority, the Treasurer of the State of California, as Master Trustee, and the Energy Commission and which provides additional security for any issue or series of Bonds pursuant to a Series Certificate executed by an Authority Representative.

“Master Trustee” means the Treasurer of the State of California, and any successor master trustee at the time serving as Master Trustee under the Master Trust Agreement.

“Officer’s Certificate” means a written certificate of the Authority signed by an Authority Representative, or of the Energy Commission, signed by an Energy Commission Representative, or of any Borrower signed by an authorized Borrower representative, which certificate shall be deemed to constitute a representation of, and shall be binding upon, the Authority, the Energy Commission or any Borrower respectively, with respect to matters set forth therein, and which certificate in each instance, including the scope, form, substance and other aspects thereof, is acceptable to the Master Trustee and/or the Bond Trustee.

“Opinion of Bond Counsel” means a written opinion of Bond Counsel.

“Opinion of Counsel” means a written opinion of any legal counsel having expertise in the matters covered in such opinion and acceptable to the Authority and the Bond Trustee, and who may be an employee of or counsel to the Authority or the Bond Trustee.

“Original Purchaser” means, with respect to any Series of Bonds, the original purchaser or representative of the original purchasers of the Bonds under the related Bond Purchase Agreement.

“Outstanding” means when used with respect to Bonds, as of the date of determination, all Bonds theretofore authenticated and delivered under the Bond Indenture, except:

(a) Bonds theretofore cancelled by the Bond Trustee or delivered to the Bond Trustee for cancellation as provided in the Bond Indenture;

(b) Bonds for whose payment or redemption money or Government Obligations in the necessary amount has been deposited with the Bond Trustee in trust for the Owners of such Bonds as provided in the Bond Indenture, provided that, if such Bonds are to be redeemed, notice of such redemption has been duly given pursuant to the Bond Indenture or provision therefor satisfactory to the Bond Trustee has been made;

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under the Bond Indenture; and

(d) Bonds alleged to have been destroyed, lost or stolen which have been paid as provided in the Bond Indenture.



“Owner” means any bondholder, holder or beneficial owner of any Bond as provided in the related Bond Indenture.

“Permitted Investments” means any of the following, if and to the extent the same are at the time legal for investment of funds held under the Master Trust Agreement and any Bond Indenture, or any other investments permitted by law:

(a) Bonds or interest-bearing notes or obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Bonds or interest-bearing notes on obligations that are guaranteed as to principal and interest by a federal agency of the United States.

(c) Bonds and notes of the State, or those for which the faith and credit of the State are pledged for the payment of principal and interest.

(d) Bonds or warrants, including, but not limited to, revenue warrants, of any county, city, metropolitan water district, State water district, State water storage district, irrigation district in the state, municipal utility district, or school district of the State.

(e) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, in bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act, in stock, bonds, debentures and other obligations of the Federal National Mortgage Association established under the National Housing Act as amended, and in the bonds of any federal home loan bank established under that act, obligations of the Federal Home Loan Mortgage Corporation, in bonds, notes, and other obligations issued by the Tennessee Valley Authority under the Tennessee Valley Authority Act as amended, and bonds, notes, and other obligations guaranteed by the Commodity Credit Corporation for the export of California agricultural products under the Commodity Credit Corporation Charter Act as amended.

(f) (1) Commercial paper of “prime” quality as defined by a nationally recognized organization that rates these securities. Eligible paper is further limited to issuing corporations or trusts approved by the State of California Pooled Money Investment Board that meet the conditions in either subparagraph (A) or subparagraph (B):

(A) Both of the following:

(i) Organized and operating within the United States.

(ii) Having total assets in excess of five hundred million dollars (\$500,000,000).

(B) Both of the following:

(i) Organized within the United States as a special purpose corporation or trust.



(ii) Having program wide credit enhancements including, but not limited to, overcollateralization, letters of credit, or surety bond.

(2) Purchases of eligible commercial paper may not exceed 180 days' maturity, represent more than 10 percent of the outstanding paper of an issuing corporation or trust, nor exceed 30 percent of the resources of an investment program. At the request of the State of California Pooled Money Investment Board, the investment shall be secured by the Authority by depositing with the State Treasurer securities authorized by California Government Code Section 53651 having a market value at least 10 percent in excess of the amount of the state's investment.

(g) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which are eligible for purchase by the Federal Reserve System.

(h) Negotiable certificates of deposits issued by a federally or state-chartered bank or savings and loan association, a state-licensed branch of a foreign bank, or a federally or state-chartered credit union. For the purposes of this definition, negotiable certificates of deposits do not come within the provisions of Chapter 4 (commencing with Section 16500) and Chapter 4.5 (commencing with Section 16600) of the California Government Code.

(i) The portion of bank loans and obligations guaranteed by the United States Small Business Administration or the United States Farmers Home Administration.

(j) Bank loans and obligations guaranteed by the Export-Import Bank of the United States.

(k) Student loan notes insured under the Guaranteed Student Loan Program established pursuant to the Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1001 and following) and eligible for resale to the Student Loan Marketing Association established pursuant to Section 133 of the Education Amendments of 1972, as amended (20 U.S.C. Sec. 1087-2).

(l) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the International Finance Corporation, or the Government Development Bank of Puerto Rico.

(m) Bonds, debentures, and notes issued by corporations organized and operating within the United States. Securities eligible for investment under subdivision (m) shall be within the top three ratings of a nationally recognized rating service.

(n) The California State Surplus Money Investment Fund established pursuant to California Government Code Section 16470, as amended from time to time.

"Person" means any natural person, firm, association, corporation, partnership, joint stock company, a joint venture, trust, unincorporated organization or firm, or a government or any agency or political subdivision thereof or other public body.

"Program" means the energy efficiency loan program established and administered by the Energy Commission to make funds available to eligible Borrowers for energy conservation projects pursuant to the Energy Conservation Assistance Act.



“Program Loan or Program Loans” means any loan or loans made by the Energy Commission to Borrowers under the Program in accordance with individual Program Loan Agreements with each Borrower, including both existing loans and future loans.

“Program Loan Agreement” means any agreement evidencing a Program Loan or Program Loans, or providing security therefor, made by the Energy Commission to any Borrower under the Program, including without limitation, the 2003A Program Loan Agreements described in the 2003A Secured Loan Agreement, together with all extensions, renewals, modifications or replacements thereof.

“Program Loan Repayment” means each semi-annual amount to be paid by a Borrower in repayment of a Program Loan pursuant to its respective Program Loan Agreement.

“Rating Agency” means any nationally recognized rating agency providing a rating on any Series of Bonds.

“Rebate Account” means any account established pursuant to a Bond Indenture or a Secured Loan Agreement with respect to payments required to be rebated to the U. S. Government.

“Secured Loan” means a loan made by the Authority to the Energy Commission under a Secured Loan Agreement.

“Secured Loan Agreement” means a Secured Loan Agreement between the Authority and the Energy Commission relating to repayment of a Series of Bonds, as amended and supplemented from time to time.

“Secured Loan Repayment” means any payment of a Secured Loan required to be made pursuant to the terms of a Secured Loan Agreement.

“Series Certificate” means with respect to any Series of Bonds, a certificate, in substantially the form attached as Exhibit A to the Master Trust Agreement, delivered by an Authority Representative and an Energy Commission Representative stating that such Series of Bonds are entitled to the benefits of the Master Trust Agreement.

“Series of Bonds” or “Bonds of a series” or words of similar meaning means the Series of Bonds authorized by a Bond Indenture and secured under the Master Trust Agreement.

“State” means the State of California.

“Supplemental Bond Indenture” means any indenture supplemental or amendatory to a Bond Indenture entered into by the Authority and the Bond Trustee delivered in accordance with the provisions of a Bond Indenture.

“Supplemental Master Trust Agreement” means any trust agreement supplementary to or amendatory of the Master Trust Agreement duly executed and delivered in accordance with the provisions of the Master Trust Agreement.

“Surplus Repayments Account” means the account by that name established in the custody of the Bond Trustee by a Bond Indenture.



“Tax Agreement” means the Tax Certificate and Agreement relating to the any Series of Bonds, between the Authority and the Energy Commission.

“Trust Estate” means the Trust Estate described in the granting clauses of a Bond Indenture.

## **2003A SECURED LOAN AGREEMENT**

### **Issuance of 2003A Bonds; Repayments**

#### Making of the Secured Loan; Issuance of the 2003A Bonds; Deposit into Debt Service Reserve Account

(a) Simultaneously with the delivery of the 2003A Secured Loan Agreement, the Authority will issue and deliver the 2003A Bonds to provide it with funds to be loaned to the Energy Commission pursuant to the 2003A Secured Loan Agreement. The 2003A Bonds will be issued in accordance with the 2003A Bond Indenture, and the proceeds thereof will be applied as provided in the 2003A Bond Indenture. Also, simultaneously with the delivery of the 2003A Secured Loan Agreement, the Energy Commission will deposit into the Debt Service Reserve Account an amount equal to the initial 2003A Debt Service Reserve Requirement in immediately available funds.

(b) Upon the terms and conditions of the 2003A Secured Loan Agreement, the Authority hereby makes a loan to the Energy Commission in the principal amount of \$28,005,000.00 (the “Secured Loan”), the same being the initial principal amount of the 2003A Bonds. The Secured Loan will be deemed to have been made when the proceeds of the sale of the 2003A Bonds are delivered to the Bond Trustee. The proceeds of the Secured Loan, together with other available funds, will be used to (i) fund Program Loans of the Energy Commission to public entity Borrowers, and (ii) pay the Costs of Issuance in connection with the issuance of the 2003A Bonds. For the purposes of the Secured Loan Agreement, the amount of any underwriters’ discount on the 2003A Bonds will be deemed to have been loaned to the Energy Commission under the 2003A Secured Loan Agreement.

(c) The Energy Commission accepts the Secured Loan and agrees to repay the Secured Loan in accordance with the provisions of the 2003A Secured Loan Agreement.

Limited Liability of Energy Commission. Notwithstanding any other provision or obligation to the contrary contained in the 2003A Secured Loan Agreement or any other related document, the liability of the Energy Commission under the 2003A Secured Loan Agreement to make Secured Loan Repayments and Additional Payments to any person, including, but not limited to, the Bond Trustee, the Authority or the Master Trustee, and their successors and assigns, is limited to the 2003A Collateral. The Energy Commission will not be liable to make payments under the 2003A Secured Loan Agreement from any other account or fund not comprising the 2003A Collateral. The obligations arising under the 2003A Secured Loan Agreement will not be deemed to constitute a debt or liability of the State or of any political subdivision thereof, other than the Energy Commission to the extent provided under the 2003A Secured Loan Agreement, or a pledge of the faith and credit of the State or of any political subdivision thereof.

Obligation to Make Secured Loan Repayments and Additional Payments. The Energy Commission will make all Secured Loan Repayments and Additional Payments, but only from the 2003A Collateral, when due. In the event of any delay in the timely and full payment of any Secured Loan Repayment or in any Additional Payment, due to the insufficiency of 2003A Program Loan Repayments, the remaining 2003A Collateral will be applied pursuant to the Bond Indenture to make up for such deficiency. The Energy Commission will pay without abatement, diminution or deduction (whether for



taxes or otherwise) all such amounts regardless of any cause or circumstance whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim that the Energy Commission may have or assert against the Authority, the Bond Trustee, the Master Trustee or any other person.

#### Secured Loan Repayments

(a) The Energy Commission agrees to make Secured Loan Repayments at the times and in the amounts sufficient in the aggregate to pay in full all 2003A Bonds issued under the 2003A Bond Indenture, together with all interest thereon. Exhibit B, which is attached to the 2003A Secured Loan Agreement, represents the Cash Flow Certificate to be delivered by the Energy Commission on the Date of Delivery of the 2003A Bonds. The schedule(s) attached to such Cash Flow Certificate will in no way diminish the obligations of the Energy Commission under the 2003A Secured Loan Agreement.

(b) The Secured Loan Repayments will be due and payable, but only from the 2003A Collateral, in accordance with the provisions of the 2003A Secured Loan Agreement. With respect to each date on which the principal of and the interest on the 2003A Bonds is payable, the Energy Commission agrees to pay:

(i) all interest which will become due and payable on the 2003A Bonds on such date; and

(ii) the principal amount of the 2003A Bonds, if any, which will become due and payable on such date.

(c) Pursuant to the provisions of the 2003A Bond Indenture, the Bond Trustee is required to give the Energy Commission notice of each Bond Payment Date on the 2003A Bonds, and the amount due and payable on such date; provided that failure of the Bond Trustee to give such notice will in no way diminish the Energy Commission's obligations under the 2003A Secured Loan Agreement.

(d) The Energy Commission will not have any right to prepay the Secured Loan.

Additional Payments under the 2003A Secured Loan Agreement. In addition to Secured Loan Repayments, the Energy Commission agrees to pay or provide, as Additional Payments under 2003A Secured Loan Agreement, but solely from the 2003A Collateral, all amounts necessary (i) to the extent not paid from Bond proceeds, to pay all Costs of Issuance of the 2003A Bonds, (ii) to replenish the Debt Service Reserve Account until the amount on deposit therein equals the 2003A Debt Service Reserve Requirement, (iii) to pay all Administrative Expenses, (iv) to pay all fees, costs and expenses of the Master Trustee under the Master Trust Agreement, and (v) to pay the reasonable fees and costs in connection with the Energy Commission's compliance with the 2003A Secured Loan Agreement (including but not limited to the fees and costs related to books, records and audits as required by the 2003A Secured Loan Agreement and administrative and legal fees and costs described in the 2003A Secured Loan Agreement), and the Master Trust Agreement. The amounts payable pursuant to clauses (i), (ii), (iii) and (v) will be payable upon the written demand of the Bond Trustee. The amounts payable pursuant to clause (iv) will be payable upon the written demand of the Master Trustee.

Energy Commission's Payments as Trust Funds. All deposits or payments under the 2003A Secured Loan Agreement made by or on behalf of the Energy Commission to the Bond Trustee or the Master Trustee will be and constitute trust funds, whether held by the Energy Commission, the Bond Trustee, the Master Trustee, the bond registrar or any bank or trust company designated for such purpose, and will continue to be impressed with a trust until such money is applied in the manner provided in the 2003A Secured Loan Agreement, the 2003A Bond Indenture or the Master Trust Agreement.



#### Pledge of 2003A Program Loans; Transfer of 2003A Program Loan Repayments

(a) As security for the repayment of the Secured Loan and the performance by the Energy Commission of its obligations under the 2003A Secured Loan Agreement, the Energy Commission, for security purposes and not as an absolute transfer, pledges and assigns to, and grants a security interest in, for the benefit of the Authority and its assigns, subject to Energy Commission Retained Rights (i) all right, title and interest in and to the 2003A Program Loans, including all 2003A Program Loan Repayments and all other proceeds arising from the 2003A Program Loans, (ii) all amounts held from time to time in the Loan Repayment Account, the Debt Service Account, the Debt Service Reserve Account and the Surplus Repayments Account established under the 2003A Secured Loan Agreement, and (iii) all amounts held under the Master Trust Agreement which are available for payment of the 2003A Bonds (collectively the “2003A Collateral”).

(b) The pledge effected by the 2003A Secured Loan Agreement will be valid and binding from the date of execution and delivery of the 2003A Secured Loan Agreement; the moneys so pledged and received after that date by the Energy Commission, the Authority, the Master Trustee or by the Bond Trustee will be subject to the lien of such pledge and assignment; and such lien will be a continuing, irrevocable and exclusive first lien and will be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Energy Commission, the Bond Trustee, the Master Trustee or the Authority irrespective of whether such parties have notice thereof.

(c) The Energy Commission covenants and agrees that it will not take any action that will adversely affect the Authority’s or the Bond Trustee’s right or ability to receive 2003A Program Loan Repayments nor create any other pledge, assignment or lien upon the 2003A Collateral, nor will it amend any 2003A Program Loan Agreement in any way that diminishes any right or privilege granted to the Energy Commission, except as expressly permitted under the 2003A Secured Loan Agreement.

(d) In order to assure the prompt and timely payment of all amounts due under the 2003A Secured Loan Agreement, the Energy Commission agrees that, on and after the Date of Delivery, it will deposit into the Loan Repayment Account established pursuant to the 2003A Secured Loan Agreement, promptly after receipt thereof, all 2003A Program Loan Repayments and any other amounts received with respect to the 2003A Program Loans.

(e) On each Bond Payment Transfer Date, the Energy Commission will deliver to the Bond Trustee and the Authority a statement showing, for each 2003A Program Loan, all payments received since the last such statement, or since the Date of Delivery (in the case of the first such statement), specifically itemizing (i) the amount of any regularly scheduled principal and interest paid with respect to such loan, (ii) the amount of any prepayment of such loan, (iii) the outstanding principal balance of such loan as of the date of such statement, and (iv) if applicable, whether such loan is delinquent and in what amount.

#### Release, Substitution and Modification of 2003A Program Loans

(a) The Energy Commission may, upon the consent of the Bond Trustee, obtain a release of any 2003A Program Loan from the lien of the 2003A Secured Loan Agreement or may in place of any 2003A Program Loan substitute another Program Loan meeting the requirements of the 2003A Secured Loan Agreement by delivering to the Bond Trustee, the Authority and any Rating Authority then rating the 2003A Bonds the following: (i) a revised Exhibit A to the 2003A Secured Loan Agreement, (ii) a certificate stating that such Program Loan satisfies the requirements of the 2003A Secured Loan Agreement, and (iii) a Cash Flow Certificate.



(b) The Energy Commission may, upon the consent of the Bond Trustee, modify the terms of any 2003A Program Loan if the Energy Commission provides to the Authority, the Bond Trustee and any Rating Agency then rating the 2003A Bonds a certification to the effect that (i) the Borrower under the 2003A Program Loan is not experiencing “energy savings” as required under the Energy Conservation Assistance Act in amounts sufficient to support the repayment of the 2003A Program Loan as scheduled, and (ii) the modifications to the 2003A Program Loan are necessary to assure continued payments under and the continued enforceability of the 2003A Program Loan.

(c) The Authority and the Bond Trustee will execute such consents to releases, substitutions or modifications and such other instruments as the Energy Commission may reasonably request in order to evidence the release of any 2003A Program Loan from the pledge and lien of the 2003A Secured Loan Agreement but only upon satisfaction of the requirements of the 2003A Secured Loan.

(d) Any Program Loan substituted for any other Program Loan pursuant to the provisions of the 2003A Secured Loan Agreement will be a Program Loan which is fully disbursed by the Energy Commission under the Program or, if partially disbursed, the Energy Commission will have set aside in escrow an amount sufficient to complete the funding of the Program Loan, and the pledge thereof will not cause any of the representations of the Energy Commission made under the 2003A Secured Loan Agreement to be incorrect or cause the Energy Commission to be in breach of any other agreement under the 2003A Secured Loan Agreement.

(e) No release, substitution or modification of any 2003A Program Loan will occur except as expressly provided under the 2003A Secured Loan Agreement.

Pledge and Assignment to Bond Trustee. Simultaneously with the delivery of the 2003A Secured Loan Agreement, the Authority will pledge and assign to the Bond Trustee, as security for the 2003A Bonds, all of the Authority’s right, title and interest in and to, among other things, the 2003A Secured Loan Agreement (except for the Authority Retained Rights), including all of its right, title and interest in and to Secured Loan Repayments and the 2003A Program Loan Repayments. The Energy Commission consents to such pledge and assignment and agrees that the Bond Trustee may enforce any and all rights, privileges and remedies of the Authority under or with respect to the 2003A Secured Loan Agreement and the 2003A Program Loans, including those rights reserved by the Authority.

## **Funds and Accounts**

Creation of Funds and Accounts. Under the 2003A Bond Indenture, there have been created and ordered to be established, in the custody of the Bond Trustee and in the name of the Authority and held in subaccounts of the Special Deposit Fund in the State Treasury (except for the Program Loan Account, which has been established in the name of the Energy Commission and held within a subaccount of the Energy Conservation Assistance Account), certain special trust accounts which shall be administered by the Bond Trustee pursuant to the terms of the 2003A Secured Loan Agreement and the 2003A Bond Indenture. Moneys in such accounts, except the Rebate Account and the Program Loan Account, will be held in trust for the benefit of the 2003A Bondholders.

## **Further Agreements**

Covenant to Maintain Tax Status. The Energy Commission covenants and agrees that it will not take any action or permit any action to be taken that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the 2003A Bonds and will take whatever action



(including, but not limited to the enforcement of any applicable provisions in any loan agreement funded with 2003A Bond proceeds), or refrain from whatever action, necessary to comply with the requirements of the Internal Revenue Code to maintain the exclusion from gross income, for federal income tax purposes, of the interest on the 2003A Bonds, including all tax covenants contained in the 2003A Bond Indenture. The Energy Commission will not permit the use of any portion of the proceeds of the 2003A Bonds to be used in a manner that would cause any 2003A Bond to become a “private activity bond” as defined in the Internal Revenue Code.

Authority’s Performance of the Energy Commission’s Obligations. In the event the Energy Commission at any time neglects, refuses, is unable to, or fails to perform any of its obligations under the 2003A Secured Loan Agreement, the Authority or the Bond Trustee, at their respective options and following at least thirty (30) days’ written notice to the Energy Commission (except where a shorter period of notice is necessary to avoid a default on the 2003A Bonds), may perform or cause to be performed such obligations, and all expenditures incurred by the Authority or the Bond Trustee thereby will be promptly paid or reimbursed by the Energy Commission to the Authority or the Bond Trustee, as the case may be, but such amounts will be limited to the 2003A Collateral.

Further Assurances and Instruments. The Energy Commission and the Authority agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments to the 2003A Secured Loan Agreement and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of the 2003A Secured Loan Agreement. Pursuant to the provisions of the 2003A Bond Indenture, the Authority has agreed to execute, acknowledge and deliver such documents as may be necessary to protect the interests of Owners of the 2003A Bonds.

Without limiting the generality of the foregoing paragraph, the Energy Commission, at the Energy Commission’s expense, will promptly procure, execute and deliver to the Authority all documents, instruments and agreements and perform all acts which are necessary, in the judgment of the Authority or the Bond Trustee, to establish, maintain, continue, preserve, protect and perfect the grant of security interest in, and pledge of, the 2003A Program Loans and other 2003A Collateral, or for the Bond Trustee to exercise and enforce its rights and remedies under the 2003A Secured Loan Agreement. Without limiting the generality of the preceding sentence, the Energy Commission will (i) procure, execute and deliver to the Authority or the Bond Trustee all endorsements, assignments, financing statements and other instruments of transfer requested by the Authority or the Bond Trustee, and (ii) take or cause to be taken such actions as may be necessary to perfect the lien of Authority in the 2003A Program Loans.

Enforcement of 2003A Program Loan Agreements; Further Acts. The Energy Commission will enforce the provisions of the 2003A Program Loans against the Borrowers. The Energy Commission will not take any action that will adversely affect the Authority’s or the Bond Trustee’s ability to receive payments made under, or other proceeds of, the 2003A Program Loans. The Energy Commission hereby represents in the 2003A Secured Loan Agreement, and will so certify as of the Date of Delivery of the 2003A Bonds, that 2003A Program Loan Repayments have in the past been paid, and are projected in the future, to be paid solely from energy savings as determined by the Energy Commission in accordance with the Energy Conservation Assistance Act or from other legally available sources.

Books and Records; Audits. The Energy Commission will maintain, separate and apart from all other records and accounts, proper books, records and accounts in which complete and correct entries will be made of all dealings and transactions in relation to 2003A Program Loans and all funds and accounts established under the 2003A Secured Loan Agreement. To the extent such records and accounts relate to funds or accounts held by the Authority under the 2003A Secured Loan Agreement and under the 2003A



Bond Indenture, the Energy Commission will maintain such records and accounts as agent for the Authority. Such accounts will show the amount of 2003A Program Loan Repayments or other amounts received with respect to each 2003A Program Loan and the date of each remittance of such amounts to the Bond Trustee. These books will be kept by the Energy Commission according to generally accepted accounting principles and standard accounting practices as applicable, and will be audited at least annually by independent certified public accountants selected by the Energy Commission and the Authority. A copy of each audit report, including statements of net assets, activities and cash flow, and notes to financial statements, will be filed with the Authority and the Bond Trustee within six months after the close of each fiscal year and sent to any Owner filing with the Energy Commission a written request therefor.

The Energy Commission will at any and all reasonable times, upon the written request of the Authority, the Bond Trustee or the Original Purchaser, permit the Bond Trustee or the Original Purchaser by their representatives to inspect the books of account, records, reports and other papers of the Energy Commission relating to the 2003A Bonds and the 2003A Secured Loan Agreement, except personnel records and any other confidential records, and to take copies and extracts therefrom, and will afford and procure a reasonable opportunity to make any such inspection. The Energy Commission will furnish to the Authority, the Bond Trustee and the Original Purchaser (in the case of the Original Purchaser, at the Original Purchaser's expense) any and all information as the Authority, the Bond Trustee or the Original Purchaser may reasonably request, in order to enable the requesting party to make any reports required by law, governmental regulations or the 2003A Secured Loan Agreement in connection with any series of Bonds and to determine whether the covenants, terms and provisions of the 2003A Secured Loan Agreement have been complied with by the Energy Commission.

Continuing Disclosure. Under the Continuing Disclosure Agreement, the Energy Commission and the State Treasurer, as Dissemination Agent, have undertaken responsibility for compliance with continuing disclosure requirements with respect to Securities and Exchange Commission Rule 15c2-12. The Energy Commission hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement.

Furthermore, the Energy Commission covenants and agrees that, if at the time of any release, substitution or replacement of a 2003A Program Loan pursuant to the Secured Loan Agreement, (1) any 2003A Borrower shall be obligated to make aggregate debt service payments on its 2003A Program Loans in an amount equal to 10% or more of the aggregate annual debt service on the Bonds, or (2) if any 2003A Borrower's aggregate 2003A Program Loans represent more than 10% of the aggregate principal amount of all 2003A Program Loans, then such a 2003A Borrower will be a "Material Participant" for purposes of the 2003A Secured Loan Agreement and an "Obligated Person" within the meaning of Securities and Exchange Commission Rule 15c2-12, and as such will be required to execute and file with the Authority, the Energy Commission and the Bond Trustee a continuing disclosure agreement, with a dissemination agent acceptable to the Authority, the Energy Commission and the Bond Trustee, under which such Material Participant will be required to file annual reports containing required financial and operating information and notices of certain events on an ongoing basis in accordance with Securities and Exchange Commission Rule 15c2-12 so long as such 2003A Borrower remains a Material Participant.

## **Events of Default and Remedies**

Events of Default. The following will be "Events of Default" under the 2003A Secured Loan Agreement, and the term "Events of Default" will mean, whenever used with reference to the 2003A Secured Loan Agreement, any one or more of the following occurrences:



(a) Default in the full and timely payment of any Secured Loan Repayment as set forth in the 2003A Secured Loan Agreement or any Additional Payment as set forth in the 2003A Secured Loan Agreement; provided, however, that if the 2003A Collateral is insufficient to make any such payment, then failure by the Energy Commission to make such Secured Loan Repayment or Additional Payment will not constitute an “Event of Default” under the 2003A Secured Loan Agreement unless caused by another Event of Default under the 2003A Secured Loan Agreement;

(b) Default in the performance, observation or compliance with any of the other covenants, agreements, conditions or provisions in the 2003A Secured Loan Agreement, all of which are payable solely from the 2003A Collateral, and the continuance thereof for a period of 30 days after receipt by the Energy Commission of a written notice from the Authority or the Bond Trustee specifying such default and requesting that it be corrected; provided, however, if prior to the expiration of such 30-day period the Energy Commission institutes action reasonably designed to cure such default, no Event of Default shall be deemed to have occurred upon the expiration of such 30-day period for so long as the Energy Commission pursues such curative action with reasonable diligence and provided that such curative action can be completed within a reasonable time; and

(c) Bankruptcy, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted voluntarily by the Energy Commission or involuntarily against the Energy Commission and, if instituted against the Energy Commission, are not dismissed within 60 days after such institution.

Notice to and by the Energy Commission. Upon the occurrence of an Event of Default, the Authority or the Bond Trustee will give prompt written notice to the Energy Commission specifying the nature of the Event of Default. The Energy Commission will give the Authority and the Bond Trustee notice of all events of which it is aware that either constitute Events of Default under the 2003A Secured Loan Agreement or, upon notice by the Authority or the Bond Trustee or the passage of time or both, would constitute Events of Default under the 2003A Secured Loan Agreement.

#### Remedies

(a) Whenever any Event of Default under the 2003A Secured Loan Agreement shall have happened and be continuing, the Authority may, and upon the written request of the Bond Trustee will, take either or both of the following steps against or with respect to the 2003A Collateral:

(i) Exercise all those rights and remedies available to it as a secured party under and in accordance with Article 9 of the Uniform Commercial Code or other applicable law in effect in the State as of the date of the 2003A Secured Loan Agreement, including the right to repossess, sell, or otherwise dispose of the 2003A Program Loans by public or private proceedings; and

(ii) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due or to enforce observance or performance of any covenant, condition or agreement of the Energy Commission under the 2003A Secured Loan Agreement.

(b) Any amounts collected pursuant to action taken under the 2003A Secured Loan Agreement, exclusive of amounts that the Energy Commission determines, subject to the approval of the



Bond Trustee, are required to pay Administrative Expenses, will be deposited into the Debt Service Account.

Remedies Not Exclusive. No remedy conferred upon or reserved to the Authority in connection with the Secured Loan to the Energy Commission pursuant to the 2003A Secured Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every remedy will be cumulative and will be in addition to every other remedy either given under the 2003A Secured Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as it may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in the 2003A Secured Loan Agreement, it will not be necessary to give any notice, other than such notice as may be in the 2003A Secured Loan Agreement expressly required.

Attorneys' Fees and Expenses. If an Event of Default shall occur and the Authority or the Bond Trustee shall employ attorneys or incur other necessary expenses for the collection of payments due under the 2003A Secured Loan Agreement or for the enforcement of performance or observance of any obligation or agreement on the part of the Energy Commission contained in the 2003A Secured Loan Agreement, the Energy Commission will on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred. All such amounts reimbursed or paid by the Energy Commission will be payable solely from the 2003A Collateral.

Waivers. In the event that any agreement contained in the 2003A Secured Loan Agreement shall be breached by either party and such breach shall thereafter be waived by the other party, such waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach under the 2003A Secured Loan Agreement. In view of the assignment of the Authority's rights under and interest in the 2003A Secured Loan Agreement to the Bond Trustee by the provisions of the 2003A Bond Indenture, the Authority will have no power to waive any default under the 2003A Secured Loan Agreement by the Energy Commission without the consent of the Bond Trustee to such waiver.

## **Miscellaneous**

Termination. The 2003A Secured Loan Agreement will terminate upon (i) full payment of the 2003A Bonds and (ii) payment or satisfaction of all other obligations incurred by the Authority or the Energy Commission under the 2003A Secured Loan Agreement with respect to the 2003A Bonds, including (without limitation) interest and other charges, if any, thereon. Upon such termination, any amounts remaining in the funds and accounts held by the Bond Trustee not needed for payment of the aforesaid items will belong to and be paid to the Energy Commission by the Bond Trustee in accordance with the provisions of the 2003A Bond Indenture.

Amendment of Agreement. The 2003A Secured Loan Agreement may, without the consent of or notice to any of the Owners, be amended in writing by both parties, the Authority and the Energy Commission, including all of the necessary approvals and signatures, from time to time, so long as any such amendment will not materially adversely affect the interests of the Owners of the Bonds, to:

(a) cure any ambiguity or formal defect or omission in the 2003A Secured Loan Agreement or in any supplement thereto;

(b) grant to or confer upon the Bond Trustee for the benefit of the Owners any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Owners or the Bond Trustee;



(c) add conditions, limitations and restrictions on the Energy Commission to be observed thereafter.

Other than amendments referred to in the preceding paragraph above and subject to the terms and provisions and limitations contained in the 2003A Bond Indenture and not otherwise, the Owners of not less than 51% in aggregate principal amount of the 2003A Bonds then Outstanding will have the right, from time to time, anything contained in the 2003A Secured Loan Agreement to the contrary notwithstanding, to consent to and approve the execution by the Energy Commission and the Authority of such supplements and amendments to the 2003A Secured Loan Agreement as will be deemed necessary and desirable by the Bond Trustee and the Authority for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the 2003A Secured Loan Agreement; provided, however, nothing in the 2003A Secured Loan Agreement will permit or be construed as permitting a supplement or amendment which would:

(i) extend the stated maturity of or time for paying principal of or interest on the Secured Loan or reduce the principal amount of or rate of interest payable on the Secured Loan without the consent of the Owners of all 2003A Bonds then Outstanding or remove the security interest in the 2003A Collateral granted pursuant to the 2003A Secured Loan Agreement; or

(ii) reduce the aggregate principal amount of 2003A Bonds then Outstanding without the consent of the Owners of which is required to authorize such supplement or amendment without the consent of the Owners of all 2003A Bonds then Outstanding.

Officers of Authority and Energy Commission Not Liable. All covenants, stipulations, promises, agreements and obligations of the Authority contained in the 2003A Secured Loan will be deemed to be covenants, stipulations, promises, agreements and obligations of the Authority and not of any member of its governing board or any officer, agent, servant or employee of the Authority in his individual capacity, and no recourse will be had for the payment of the principal or interest on the 2003A Bonds or for any claim based thereon or under the 2003A Secured Loan Agreement against any member of the Board or any officer, agent, servant or employee of the Authority or any natural person executing the 2003A Bonds. No member of the Authority's board of directors or any person executing the 2003A Bonds will be liable personally on the 2003A Bonds or be subject to any personal liability or accountability by reason of the 2003A Bonds.

All covenants, stipulations, promises, agreements and obligations of the Energy Commission contained in the 2003A Secured Loan Agreement will be deemed to be covenants, stipulations, promises, agreements and obligations of the Energy Commission and not of any commissioner, director, officer, agent, servant or employee of the Energy Commission in his individual capacity, and no recourse will be had for the payment of the Secured Loan or the principal of or interest on the 2003A Bonds or for any claim based thereon or under the 2003A Secured Loan Agreement against any commissioner, director, officer, agent, servant or employee of the Energy Commission. No commissioner, director, officer, agent, servant or employee of the Energy Commission will be subject to any personal liability or accountability by reason of the execution of the 2003A Secured Loan Agreement or the issuance of the 2003A Bonds.

Authority Not Liable for Certain Actions or Inactions. Notwithstanding any other provision of the 2003A Secured Loan Agreement (a) the Authority will not be liable to the Energy Commission, the Bond Trustee, the Owners or any other person for any failure of the Authority to take action under the 2003A Secured Loan Agreement unless the Authority (i) is requested in writing by an appropriate person to take such action and (ii) is assured of payment of or reimbursement for any expenses in such action, and (b) except with respect to any action for specific performance or any action in the nature of a



prohibitory or mandatory injunction, neither the Authority nor any director of the Authority or any other official or employee of the Authority will be liable to the Energy Commission, the Bond Trustee, the Owners or any other person for any action taken by it or by its officers, servants, agents or employees, or for any failure to take action under the 2003A Secured Loan Agreement or the 2003A Bond Indenture. In acting under the 2003A Secured Loan Agreement, or in refraining from acting under the 2003A Secured Loan Agreement, the Authority may conclusively rely on the advice of its legal counsel.

## **2003A BOND INDENTURE**

### **The 2003A Bonds**

Execution and Delivery of 2003A Bonds. The 2003A Bonds will be executed in the manner set forth in the 2003 Bond Indenture and delivered to the Bond Trustee for authentication.

### **Funds and Accounts; Application of Bond Proceeds**

Creation of Funds and Accounts. Certain accounts are created and ordered to be established, in the custody of the Bond Trustee and in the name of the Authority and held in subaccounts of the Special Deposit Fund in the State Treasury (except for the Program Loan Account, which is established in the name of the Energy Commission and held in a subaccount of the Energy Conservation Assistance Account). Moneys in such accounts, except the Rebate Account and the Program Loan Account, will be held in trust for the benefit of the 2003A Bondholders.

#### Loan Repayment Account

(a) Pursuant to the 2003A Secured Loan Agreement, the Energy Commission is required to transfer to the Bond Trustee for deposit into the Loan Repayment Account all 2003A Program Loan Repayments and any other amounts received with respect to the 2003A Program Loans. The Authority is required to transfer to the Bond Trustee, for deposit into the Loan Repayment Account, the amounts required by the 2003A Bond Indenture. All interest earnings on investment held for the credit of the Loan Repayment Account will remain in the account.

(b) Amounts in the Loan Repayment Account will be applied by the Authority to pay Administrative Expenses as they become due and payable. If at any time the amount on deposit in the Loan Repayment Account is insufficient to pay any Administrative Expenses as they become due and payable, the Authority, pursuant to the 2003A Secured Loan Agreement, is required to notify the Bond Trustee, the Master Trustee and the Energy Commission of the amount of any deficiency, and the Bond Trustee will request the Master Trustee to deposit into the Loan Repayment Account any amounts required to pay such Administrative Expenses from any moneys available under the Master Trust Agreement.

(c) Pursuant to the 2003A Secured Loan Agreement, not later than the Bond Payment Transfer Date, the Authority is required to transfer (or to cause the Bond Trustee to transfer) (i) to the Debt Service Account the amount required, after taking into account any interest earnings on the Debt Service Account and the Debt Service Reserve Account which will be on deposit in the Debt Service Account as of such Bond Payment Date, to pay principal and interest on the 2003A Bonds due on such Bond Payment Date, and (ii) to cause the amount in the Debt Service Reserve Account to equal the 2003A Debt Service Reserve Requirement.



(d) If on any Bond Payment Transfer Date there are insufficient moneys in the Loan Repayment Account to make the transfer required under the 2003A Secured Loan Agreement, the Authority is required to transfer (or cause the Bond Trustee to transfer), first, from the Surplus Repayments Account, and then from the Debt Service Reserve Account, the amount of such deficiency. The Authority is required to immediately notify (or cause the Bond Trustee to immediately notify) the Master Trustee of the amounts so transferred from the Debt Service Reserve Account and the cumulative amount of the deficiency in the Debt Service Reserve Account as of such date. In addition, if on any Bond Payment Transfer Date, there are insufficient amounts to make the transfer required under the 2003A Secured Loan Agreement, after making the transfer from the Surplus Repayments Account and the Debt Service Reserve Account, the Authority is required to immediately notify (or cause the Bond Trustee to immediately notify) the Master Trustee and the Energy Commission of the amount of any shortfall and the Bond Trustee will direct the Master Trustee to deposit into the Debt Service Account any amounts required to pay any principal or interest on the 2003A Bonds on the Bond Payment Date.

(e) All amounts on deposit in the Loan Repayment Account after making the transfers required by clauses (b) and (c) above will be transferred, on the Bond Payment Transfer Date, into the Surplus Repayments Account.

(f) In determining the amounts to be transferred to or from any fund or account pursuant to the 2003A Bond Indenture, the Authority shall rely upon a certificate of an Energy Commission Representative, and the Energy Commission covenants to provide such certificates on a timely basis so as to permit the Authority to comply with the 2003A Bond Indenture.

#### Debt Service Account

(a) Moneys deposited in the Debt Service Account by the Authority, the Bond Trustee or the Master Trustee will be applied by the Bond Trustee solely to pay interest on and principal of the 2003A Bonds as the same becomes due. Any excess amounts remaining after such payment on any Bond Payment Date will be transferred to the Surplus Repayments Account.

(b) The Bond Trustee will send to the Authority and the Energy Commission, approximately 15 Business Days prior to a Bond Payment Date, a statement of the amounts which the Authority will need to transfer for deposit into the Debt Service Account prior to the next Bond Payment Date. However, failure of the Bond Trustee to provide such statement will not relieve the Authority of any obligation to transfer funds in the amounts and at the times required by the 2003A Bond Indenture.

#### Debt Service Reserve Account

(a) Pursuant to the 2003A Secured Loan Agreement, the Authority will deposit into the Debt Service Reserve Account, on each Bond Payment Transfer Date, the amounts required therein. All interest earnings on investments held for the credit of the Debt Service Reserve Account will be transferred to the Debt Service Account on the Business Day preceding each Bond Payment Transfer Date.

(b) Funds on deposit in the Debt Service Reserve Account will be used to pay debt service on the 2003A Bonds in the event moneys on deposit in the Debt Service Account will be insufficient to pay the principal and interest on the 2003A Bonds as the same become due.

(c) On each principal payment date, and after making or providing for any transfers described in clause (b) above, the Authority is required under the 2003A Secured Loan Agreement to



direct the Bond Trustee to transfer from the Debt Service Reserve Account to the Master Trustee any amount in excess of the 2003A Debt Service Reserve Requirement.

(d) So long as the amount on deposit in the Debt Service Reserve Account will equal the 2003A Debt Service Reserve Requirement, no further deposits to the Debt Service Reserve Account will be required. If the Authority ever requests the Bond Trustee to withdraw funds from the Debt Service Reserve Account to prevent a default as provided in the 2003 Bond Indenture, and if the Bond Trustee consents thereto and the withdrawal of such funds reduces the amount on deposit in the Debt Service Reserve Account to less than the 2003A Debt Service Reserve Requirement, the Bond Trustee will notify the Master Trustee and request that the deficiency be held in the Master Reserve Account. If the Debt Service Reserve Account is subsequently replenished from 2003A Loan Repayments, the Bond Trustee will notify the Master Trustee of such replenishment.

(e) In determining the amounts to be transferred to or from the Debt Service Reserve Account pursuant to the 2003A Bond Indenture, the Authority shall rely upon a certificate of an Energy Commission Representative, and the Energy Commission covenants to provide such certificates on a timely basis to permit the Authority to comply with the 2003A Bond Indenture.

Surplus Repayments Account. Amounts on deposit in the Surplus Repayments Account will be transferred to the Debt Service Account on any Bond Payment Transfer Date to the extent such amounts are required to pay principal and interest on the 2003A Bonds coming due on such Bond Payment Date as provided in the 2003A Bond Indenture. Subject to the foregoing sentence, the Authority is required to transfer (or cause the Bond Trustee to transfer) from the Surplus Repayments Account to the Master Trustee for deposit into the Master Reserve Account (i) the amount in such account in excess of the amount necessary to deliver a Cash Flow Certificate, which certificate the Energy Commission has covenanted in the 2003A Secured Loan Agreement to deliver to the Bond Trustee and the Authority on or before each Bond Payment Date, less (ii) any amounts required by the Energy Commission, as stated in a certificate of an Energy Commission Representative, to pay administrative costs and legal costs related to the Bonds and compliance with the terms of the 2003A Secured Loan Agreement, the Master Trust Agreement and the 2003A Bond Indenture including, without limitation, implementation of the Program and making of new loans with Bond proceeds. The amounts described in clause (ii) above will be disbursed by the Authority from the Surplus Repayments Account, from time to time, by the Bond Trustee upon receipt of a requisition therefor executed by an Energy Commission Representative. Finally, any amounts remaining in the Surplus Repayments Account on the final Bond Payment Date will be transferred to the Master Trustee and applied according to the Master Trust Agreement.

Program Loan Account. The Authority is required to deposit into the Program Loan Account the net proceeds of the 2003A Bonds, after deposit of the amounts, if any, required under the 2003A Bond Indenture into the Debt Service Account and the Cost of Issuance Account. Moneys on deposit in the Program Loan Account will be disbursed by the Bond Trustee to the Energy Commission to fund Program Loans to public entities and for other purposes authorized by the Energy Conservation Assistance Act, so long as any such disbursement does not cause interest on the 2003A Bonds to be included in gross income for federal income tax purposes. The Program Loan Account is a trust fund dedicated to making additional Program Loans and other purposes authorized by the Energy Conservation Assistance Act, but amounts therein are not pledged to the payment of the 2003A Bonds.

Moneys to be Held in Trust. All moneys deposited with or paid to the Bond Trustee for the funds and accounts held by the Bond Trustee under the 2003A Bond Indenture or under the 2003A Secured Loan Agreement will be held by the Bond Trustee in trust and will be invested and applied only in accordance with the provisions of the 2003A Bond Indenture, and, until used or applied as provided in the 2003A Bond Indenture or the 2003A Secured Loan Agreement, and except as provided in the 2003A



Bond Indenture, will constitute part of the Trust Estate and be subject to the lien, terms and provisions of the 2003A Bond Indenture and will not be commingled with any other funds of the Authority. The Bond Trustee will not be under any liability for interest on any moneys held uninvested under the 2003A Bond Indenture except to the extent such moneys are invested in Permitted Investments.

Investment of Moneys. Moneys held by the Bond Trustee in each of the funds and accounts under the 2003A Bond Indenture will be invested and reinvested by the Bond Trustee, pursuant to written directions of the Authority in consultation with an Energy Commission Representative, in Permitted Investments which mature or are subject to redemption by the owner thereof prior to the date such funds are expected to be needed. If at any time the Authority, in consultation with the Energy Commission, has not directed the Bond Trustee, such moneys will be invested in the Permitted Investments described in clause (ii) of the definition thereof, namely, the California State Surplus Money Investment Fund. The Bond Trustee may conclusively rely upon such instructions as to both the suitability and legality of the directed investments. In the event no such instructions are received by the Bond Trustee, such funds will be held in the State Surplus Money Investment Fund, pending receipt of such investment instructions. The Bond Trustee is authorized, in making or disposing of any investment permitted by the 2003A Bond Indenture, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Bond Trustee or for any third person or dealing as principal for its own account. Any such Permitted Investments will be held by or under the control of the Bond Trustee and will be deemed at all times a part of the fund or account in which such moneys are originally held.

The interest accruing on each fund or account and any profit realized from such Permitted Investments will be credited to the Debt Service Account or such other account as stipulated in the 2003A Bond Indenture or under the 2003A Secured Loan Agreement, and any loss resulting from such Permitted Investments will be charged to the fund or account from which such moneys originally came. Investments held under the 2003A Bond Indenture will be valued at cost. The Bond Trustee will sell or present for redemption and reduce to cash a sufficient amount of such Permitted Investments whenever it will be necessary to provide moneys in any fund or account for the purposes of such fund or account and the Bond Trustee will not be liable for any loss resulting from such investments. The Bond Trustee will have no responsibility with respect to the compliance by the Energy Commission with respect to any covenant in the 2003A Bond Indenture or in the Master Trust Agreement regarding investments made in accordance with the 2003A Bond Indenture, other than to use its best reasonable efforts to comply with instructions from the Energy Commission regarding such investments. Since the investments permitted by the 2003A Bond Indenture and the 2003A Secured Loan Agreement have been made at the request of the Authority, in consultation with the Energy Commission, and the making of such investments will be subject to the Energy Commission's direction, the Bond Trustee specifically disclaims any obligation to the Energy Commission for any loss arising from or tax consequences of, investments pursuant to the provisions of the 2003A Bond Indenture.

#### Rights and Obligations with Respect to the 2003A Secured Loan Agreement

(a) The 2003A Secured Loan Agreement sets forth certain covenants and obligations of the Energy Commission and the Authority, and reference is hereby made to such Agreement for a detailed statement of such covenants and obligations. So long as any of the 2003A Bonds remain outstanding, the Authority and the Bond Trustee will faithfully and punctually perform and observe all obligations and undertakings on their part to be performed and observed under the 2003A Secured Loan Agreement, including the Bond Trustee's undertakings in Articles III and IV therein.

(b) The Authority and the Bond Trustee covenant to maintain, at all times, the validity and effectiveness of the 2003A Secured Loan Agreement and (except as expressly permitted by



the 2003A Bond Indenture and by the 2003A Secured Loan Agreement) will take no action, will permit no action to be taken by others within their control and will not omit to take any action, which action or omission might release the Energy Commission from its liabilities or obligations under the 2003A Secured Loan Agreement or result in the surrender, termination, amendment or modification of, or impair the validity of, such Agreement.

(c) The Authority covenants to enforce diligently all covenants, undertakings and obligations of the Energy Commission under the 2003A Secured Loan Agreement and hereby authorizes and directs the Bond Trustee to enforce any and all of its rights under the 2003A Secured Loan Agreement on behalf of the Authority and the Holders of the 2003A Bonds.

(d) The Authority and the Bond Trustee are authorized, without the consent of or notice to any of the Bond Holders, but with the written consent and approval of the Energy Commission, enter into any amendment, change or modification of the 2003A Secured Loan Agreement as may be necessary, in the opinion of Bond Counsel to comply fully with all applicable rules, rulings, policies, procedures, and regulations promulgated or proposed by the Department of the Treasury or the Internal Revenue Service pertaining to obligations issued under Section 103(b)(4)(A) of the Internal Revenue Code.

(e) Neither the Authority nor the Bond Trustee is authorized without the consent to any amendment or modification of the 2003A Secured Loan Agreement unless the Authority has received an opinion of Bond Counsel to the effect that such amendment will not adversely affect the rights of Bond Holders under the 2003A Bond Indenture and will not impair the exclusion from gross income, for federal income tax purposes, of the interest on the 2003A Bonds and exemption from State of California personal income taxation.

## **Default and Remedies**

Events of Default. The term “event of default,” wherever used in the 2003A Bond Indenture, means any one of the following events (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any interest on any Bond when such interest becomes due and payable; (b) default in the payment of the principal of any Bond when the same becomes due and payable; or (c) default in the performance, or breach, of any covenant or agreement of the Authority in the 2003A Bond Indenture (other than a covenant or agreement a default in the performance or breach of which is specifically dealt with elsewhere in the 2003A Bond Indenture), and continuance of such default or breach for a period of 60 days after there has been given to the Authority by the Bond Trustee or to the Authority and the Bond Trustee by the owners of at least 10% in principal amount of the 2003A Bonds Outstanding, a written notice specifying such default or breach and requiring it to be remedied; provided, that if such default cannot be fully remedied within such 60-day period, but can reasonably be expected to be fully remedied, such default shall not constitute an event of default if the Authority shall immediately upon receipt of such notice commence the curing of such default and shall thereafter prosecute and complete the same with due diligence and dispatch.

Exercise of Remedies by the Bond Trustee. Upon the occurrence and continuance of any event of default under the 2003A Bond Indenture, unless the same is waived as provided in the 2003A Bond Indenture, the Bond Trustee will have the following rights and remedies, in addition to any other rights and remedies provided under the 2003A Bond Indenture or by law:



(a) *Right to Bring Suit, Etc.* The Bond Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of, premium and interest on the 2003A Bonds Outstanding, including interest on overdue principal and on overdue installments of interest, and any other sums due under the 2003A Bond Indenture, to realize on or to foreclose any of its interests or liens under the 2003A Bond Indenture, to enforce and compel the performance of the duties and obligations of the Authority as set forth in the 2003A Bond Indenture and to enforce or preserve any other rights or interests of the Bond Trustee under the 2003A Bond Indenture with respect to any of the Trust Estate or otherwise existing at law or in equity.

(b) *Exercise of Remedies at Direction of Bondowners.* If requested in writing to do so by the owners of not less than 25% in principal amount of 2003A Bonds Outstanding and if indemnified as provided in the 2003A Bond Indenture, the Bond Trustee will be obligated to exercise such one or more of the rights and remedies conferred by the 2003A Bond Indenture as the Bond Trustee will deem most expedient in the interests of the bondowners.

(c) *Appointment of Receiver.* Upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Bond Trustee and of the bondowners under the 2003A Bond Indenture, the Bond Trustee will be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate, pending such proceedings, with such powers as the court making such appointment will confer.

(d) *Suits to Protect the Trust Estate.* The Bond Trustee will have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of the 2003A Bond Indenture and to protect its interests and the interests of the bondowners in the Trust Estate, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security under the 2003A Bond Indenture or be prejudicial to the interests of the bondowners or the Bond Trustee, or to intervene (subject to the approval of a court of competent jurisdiction) on behalf of the bondowners in any judicial proceeding to which the Authority is a party and which in the judgment of the Bond Trustee has a substantial bearing on the interests of the bondowners.

(e) *Enforcement Without Possession of 2003A Bonds.* All rights of action under the 2003A Bond Indenture or any of the 2003A Bonds may be enforced and prosecuted by the Bond Trustee without the possession of any of the 2003A Bonds or the production thereof in any suit or other proceeding relating thereto, and any such suit or proceeding instituted by the Bond Trustee will be brought in its own name as trustee of an express trust. Any recovery of judgment will, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Bond Trustee, its agents and counsel, and subject to the provisions of the 2003A Bond Indenture, be for the equal and ratable benefit of the owners of the 2003A Bonds in respect of which such judgment has been recovered.

(f) *Restoration of Positions.* If the Bond Trustee or any bondowner has instituted any proceeding to enforce any right or remedy under the 2003A Bond Indenture by suit, foreclosure, the appointment of a receiver, or otherwise, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Bond Trustee or to such bondowner, then and in every case the Authority, the Bond Trustee and the bondowners will, subject to any determination in such proceeding, be restored to their former positions and rights



under the 2003A Bond Indenture, and thereafter all rights and remedies of the Bond Trustee and the bondowners will continue as though no such proceeding had been instituted.

Limitation on Suits by Bondowners. No owner of any Bond will have any right to institute any proceeding, judicial or otherwise, under or with respect to the 2003A Bond Indenture, or for the appointment of a receiver or trustee or for any other remedy under the 2003A Bond Indenture, unless: (a) such owner has previously given written notice to the Bond Trustee of a continuing event of default; (b) the owners of not less than 25% in principal amount of the 2003A Bonds Outstanding will have made written request to the Bond Trustee to institute proceedings in respect of such event of default in its own name as Bond Trustee under the 2003A Bond Indenture; (c) such owner or owners have offered to the Bond Trustee indemnity as provided in the 2003A Bond Indenture against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Bond Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and (e) no direction inconsistent with such written request has been given to the Bond Trustee during such 60-day period by the owners of a majority in principal amount of the Outstanding 2003A Bonds; it being understood and intended that no one or more owners of 2003A Bonds will have any right in any manner whatever by virtue of, or by availing of, any provision of the 2003A Bond Indenture to affect, disturb or prejudice the lien of the 2003A Bond Indenture or the rights of any other owners of 2003A Bonds, or to obtain or to seek to obtain priority or preference over any other owners (except as provided in the 2003A Bond Indenture) or to enforce any right under the 2003A Bond Indenture, except in the manner in the 2003A Bond Indenture provided for the equal and ratable benefit of all Outstanding 2003A Bonds.

Notwithstanding the foregoing or any other provision in the 2003A Bond Indenture, however, the owner of any Bond will have the right which is absolute and unconditional to receive payment of the principal of and interest on such Bond on the respective stated maturity expressed in such Bond, and nothing contained in the 2003A Bond Indenture affect or impair the right of any owner to institute suit for the enforcement of any such payment.

Control of Proceedings by Bondowners. The owners of a majority in principal amount of the 2003A Bonds Outstanding will have the right, during the continuance of an event of default,

(a) to require the Bond Trustee to proceed to enforce the 2003A Bond Indenture, either by judicial proceedings for the enforcement of the payment of the 2003A Bonds and the foreclosure of the 2003A Bond Indenture, or otherwise; and

(b) to direct the time, method and place of conducting any proceeding for any remedy available to the Bond Trustee, or exercising any trust or power conferred upon the Bond Trustee under the 2003A Bond Indenture, provided that:

(i) such direction will not be in conflict with any rule of law or the 2003A Bond Indenture,

(ii) the Bond Trustee may take any other action deemed proper by the Bond Trustee which is not inconsistent with such direction, and

(iii) the Bond Trustee will not determine that the action so directed would be unjustly prejudicial to the owners not taking part in such direction.

Notwithstanding any provision of the 2003A Bond Indenture, if the Authority provides to the Bond Trustee and the Authority an Opinion of Bond Counsel to the effect that any action required under the 2003A Bond Indenture is no longer required, or to the effect that some further action is required, to



maintain the exclusion of interest on the 2003A Bonds from federal gross income, the Bond Trustee and the Authority may conclusively rely on such opinion in complying with the provisions of the 2003A Bond Indenture, and the covenants under the 2003A Bond Indenture will be deemed to be modified to that extent.

Application of Moneys Collected. Any moneys collected by the Bond Trustee pursuant to the 2003A Bond Indenture (after the deductions for payment of costs and expenses of proceedings resulting in the collection of such moneys) together with any other sums then held by the Bond Trustee as part of the Trust Estate, will be applied in the following order, at the date or dates fixed by the Bond Trustee and, in case of the distribution of such money on account of principal or interest, upon presentation of the 2003A Bonds and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

(a) First: To the payment of all amounts due the Bond Trustee under the 2003A Bond Indenture;

(b) Second: To the payment of the whole amount then due and unpaid upon the Outstanding 2003A Bonds for principal and interest, in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected by the Bond Trustee or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the 2003A Bonds) on overdue principal and on overdue installments of interest; and in case such proceeds will be insufficient to pay in full the whole amount so due and unpaid upon such 2003A Bonds, then to the payment of such principal and interest, without any preference or priority, ratably according to the aggregate amount so due; and

(c) Third: To the payment of the remainder, if any, to the Authority or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

Whenever moneys are to be applied by the Bond Trustee pursuant to the provisions of the 2003A Bond Indenture, such moneys will be applied by it at such times, and from time to time, as the Bond Trustee will determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Bond Trustee will apply such moneys, it will fix the date (which will be a Bond Payment Date unless it will deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date will cease to accrue. The Bond Trustee will give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and will not be required to make payment to the owner of any unpaid Bond until such Bond will be presented to the Bond Trustee for appropriate endorsement or for cancellation if fully paid.

Rights and Remedies Cumulative. No right or remedy in the 2003A Bond Indenture conferred upon or reserved to the Bond Trustee or to the bondowners is intended to be exclusive of any other right or remedy, and every right and remedy will, to the extent permitted by law, be cumulative and in addition to every other right and remedy given under the 2003A Bond Indenture or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy under the 2003A Bond Indenture, or otherwise, will not prevent the concurrent assertion or employment of any other appropriate right or remedy. No delay or omission of the Bond Trustee or of any owner of any Bond to exercise any right or remedy accruing upon an event of default will impair any such right or remedy or constitute a waiver of any such event of default or an acquiescence therein. Every right and remedy given under the 2003A Bond Indenture or by law to the Bond Trustee or to the bondowners may be exercised



from time to time, and as often as may be deemed expedient, by the Bond Trustee or by the bondowners, as the case may be.

Waiver of Past Defaults. Before any judgment or decree for payment of money due has been obtained by the Bond Trustee as provided in the 2003A Bond Indenture, the owners of a majority in principal amount of the 2003A Bonds Outstanding may, by written notice delivered to the Bond Trustee and the Authority, on behalf of the owners of all the 2003A Bonds waive any past default under the 2003A Bond Indenture and its consequences, except a default (a) in the payment of the principal of or interest on any Bond, or (b) in respect of a covenant or provision of the 2003A Bond Indenture which under the 2003A Bond Indenture cannot be modified or amended without the consent of the owner of each Outstanding Bond affected.

Upon any such waiver, such default shall cease to exist, and any event of default arising therefrom shall be deemed to have been cured, for every purpose of the Bond Indenture; but no such waiver will extend to or affect any subsequent or other default or impair any right or remedy consequent thereon.

### **Supplemental Bond Indentures**

Supplemental Bond Indentures without Consent of Bondowners. Without the consent of the owners of any 2003A Bonds, the Authority and the Bond Trustee may from time to time enter into one or more Supplemental Bond Indentures for any of the following purposes so long as such Supplemental Bond Indenture does not materially adversely affect the Owners of the Bonds:

(a) to correct or amplify the description of any property at any time subject to the lien of the 2003A Bond Indenture, or better to assure, convey and confirm unto the Bond Trustee any property subject or required to be subjected to the lien of the 2003A Bond Indenture, or to subject to the lien of the 2003A Bond Indenture additional property; (b) to add to the conditions, limitations and restrictions on the authorized amount, terms or purposes of issue, authentication and delivery of 2003A Bonds or of any series of 2003A Bonds, as set forth in the 2003A Bond Indenture, additional conditions, limitations and restrictions thereafter to be observed; (c) to evidence the appointment or succession of a new trustee under the 2003A Bond Indenture; (d) to add to the covenants of the Authority or to the rights, powers and remedies of the Bond Trustee for the benefit of the owners of all of the 2003A Bonds or to surrender any right or power in the 2003A Bond Indenture conferred upon the Authority; (e) to cure any ambiguity, to correct or supplement any provision in the 2003A Bond Indenture which may be inconsistent with any other provision in the 2003A Bond Indenture or to make any other change, with respect to matters or questions arising under the 2003A Bond Indenture, which will not be inconsistent with the provisions of the 2003A Bond Indenture; (f) to modify, eliminate or add to the provisions of the 2003A Bond Indenture to such extent as will be necessary to effect the qualification of the 2003A Bond Indenture under the Trust Indenture Act of 1939, as amended, or under any similar federal statute hereafter enacted, or to permit the qualification of the 2003A Bonds for sale under the securities laws of the United States or any state of the United States.

Supplemental Bond Indentures with Consent of Bondowners. With the consent of the owners of not less than a majority in principal amount of the 2003A Bonds then Outstanding affected by such Supplemental Bond Indenture, the Authority and the Bond Trustee may enter into one or more Supplemental Bond Indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the 2003A Bond Indenture or of modifying in any manner the rights of the owners of the 2003A Bonds under the 2003A Bond Indenture; provided, however, that no such



Supplemental Bond Indenture will, without the consent of the owner of each Outstanding Bond affected thereby:

(a) change the stated maturity of the principal of, or any installment of interest on, any Bond, or reduce the principal amount thereof or the interest thereon, or change any place of payment where, or the currency in which, any Bond, or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the stated maturity thereof; (b) reduce the percentage in principal amount of the Outstanding 2003A Bonds, the consent of whose owners is required for any such Supplemental Bond Indenture, or the consent of whose owners is required for any waiver provided for in the 2003A Bond Indenture of compliance with certain provisions of the 2003A Bond Indenture or certain defaults under the 2003A Bond Indenture and their consequences; (c) modify the obligation of the Authority to make payment on or provide funds for the payment of any Bond; (d) modify or alter the provisions of the exceptions to the definition of the term “Outstanding”; (e) modify any of the provisions of the Section here summarized, except to increase any percentage provided thereby or to provide that certain other provisions of the 2003A Bond Indenture cannot be modified or waived without the consent of the owner of each Bond affected thereby; or (f) permit the creation of any lien ranking prior to the lien of the 2003A Bond Indenture with respect to any of the Trust Estate or terminate the lien of the 2003A Bond Indenture on any property at any time subject to the 2003A Bond Indenture or deprive the owner of any Bond of the security afforded by the lien of the 2003A Bond Indenture.

Execution of Supplemental Bond Indentures. In executing, or accepting the additional trusts created by, any Supplemental Bond Indenture permitted by the 2003A Bond Indenture or the modification thereby of the trusts created by the 2003A Bond Indenture, the Bond Trustee and the Authority will receive and, subject to the provisions of the 2003A Bond Indenture, will be fully protected in relying upon, an Opinion of Bond Counsel addressed and delivered to the Bond Trustee and the Authority stating that the execution of such Supplemental Bond Indenture is permitted by and in compliance with the 2003A Bond Indenture, and that the execution and delivery thereof will not adversely affect the exclusion from federal gross income of interest on any tax-exempt 2003A Bonds. The Bond Trustee may, but will not, except to the extent required in the case of any Supplemental Bond Indenture entered into under the 2003A Bond Indenture, be obligated to, enter into any Supplemental Bond Indenture which affects the Bond Trustee’s own rights, duties or immunities under the 2003A Bond Indenture or otherwise.

Effect of Supplemental Bond Indentures. Upon the execution of any Supplemental Bond Indenture under the 2003A Bond Indenture will be modified in accordance therewith and such Supplemental Bond Indenture will form a part of the 2003A Bond Indenture for all purposes; and every owner of 2003A Bonds theretofore or thereafter authenticated and delivered under the 2003A Bond Indenture will be bound thereby.

Consent of Energy Commission to Supplemental Bond Indentures. Anything in the 2003A Bond Indenture to the contrary notwithstanding, a Supplemental Bond Indenture under the 2003A Bond Indenture which affects any rights of the Energy Commission in any manner not contemplated by the 2003A Secured Loan Agreement will not become effective unless and until the Energy Commission will have consented in writing to the execution and delivery of such Supplemental Bond Indenture, which consent will not be unreasonably withheld. The Bond Trustee will cause notice of the proposed execution and delivery of any such Supplemental Bond Indenture to be mailed by certified or registered mail to the Energy Commission at least 15 days prior to the effective date of such Supplemental Bond Indenture.



## **Satisfaction and Discharge**

Payment, Discharge and Defeasance of 2003A Bonds. All or any of the 2003A Bonds will be deemed to be paid and discharged and no longer Outstanding under the 2003A Bond Indenture and will cease to be entitled to any lien, benefit or security of the 2003A Bond Indenture if the Authority will pay or provide for the payment of such 2003A Bonds in any one or more of the following ways:

(a) by paying or causing to be paid the principal of and interest on such 2003A Bonds, as and when the same become due and payable; (b) by delivering such 2003A Bonds to the Bond Trustee for cancellation; or (c) by depositing in trust with the Bond Trustee moneys and Government Obligations in an amount, together with the income or increment to accrue thereon, without consideration of any reinvestment thereof, sufficient to pay and discharge the indebtedness on such 2003A Bonds at or before their respective maturity dates (including the payment of the principal of and interest payable on such 2003A Bonds to the maturity date thereof).

The 2003A Bonds may be defeased in advance of their maturity dates only with cash or Government Obligations pursuant to subsection (c) above, subject to receipt by the Bond Trustee of (1) a verification report prepared by independent certified public accountants, or other verification agent, satisfactory to the Bond Trustee and the Authority, and (2) an Opinion of Bond Counsel addressed and delivered to the Bond Trustee and the Authority to the effect that the payment of the principal of and interest on all of the 2003A Bonds then Outstanding and any and all other amounts required to be paid under the provisions of the 2003A Bond Indenture has been provided for in the manner set forth in the 2003A Bond Indenture and to the effect that so providing for the payment of any 2003A Bonds will not cause the interest on any tax-exempt 2003A Bonds to be included in gross income for federal income tax purposes, notwithstanding the satisfaction and discharge of the 2003A Bond Indenture.

The foregoing notwithstanding, the liability of the Authority in respect of such 2003A Bonds will continue, but the owners thereof will thereafter be entitled to payment only out of the moneys and Government Obligations deposited with the Bond Trustee as aforesaid.

Moneys and Government Obligations so deposited with the Bond Trustee pursuant to the 2003A Bond Indenture will not be a part of the Trust Estate but will constitute a separate trust fund for the benefit of the Persons entitled thereto. Such moneys and Government Obligations will be applied by the Bond Trustee to the payment to the Persons entitled thereto, of the principal and interest for whose payment such moneys and Government Obligations have been deposited with the Bond Trustee.

Satisfaction and Discharge of Bond Indenture. The 2003A Bond Indenture and the lien, rights and interests created by the 2003A Bond Indenture will cease, determine and become null and void (except as to any surviving rights under the 2003A Bond Indenture) if the following conditions are met:

(a) the principal of and interest on all 2003A Bonds has been paid or is deemed to be paid and discharged by meeting the conditions of the 2003A Bond Indenture; (b) all other sums payable under the 2003A Bond Indenture with respect to the 2003A Bonds are paid or provision satisfactory to the Bond Trustee is made for such payment; (c) the Bond Trustee receives an Opinion of Bond Counsel (which may be based upon a ruling or rulings of the Internal Revenue Service) addressed to the Bond Trustee and the Authority to the effect that so providing for the payment of any 2003A Bonds will not adversely affect the exclusion of the interest on the 2003A Bonds from gross income for federal income tax purposes, notwithstanding the satisfaction and discharge of the 2003A Bond Indenture; and (d) the Bond Trustee receives an Opinion of Counsel addressed and delivered to the Bond Trustee and the Authority to the effect that all conditions



precedent in this Section to the satisfaction and discharge of the 2003A Bond Indenture have been accomplished.

Thereupon, the Bond Trustee will execute and deliver to the Authority a termination statement and such instruments of satisfaction and discharge of the Bond Indenture as may be necessary and will pay, assign, transfer and deliver to the Authority, or other Persons entitled thereto, all moneys, securities and other property then held by it under the 2003A Bond Indenture as a part of the Trust Estate, other than moneys or Government Obligations held in trust by the Bond Trustee as provided in the 2003A Bond Indenture for the payment of the principal of and interest on the 2003A Bonds.

Rights Retained After Discharge. Notwithstanding the satisfaction and discharge of the 2003A Bond Indenture, the rights of the Bond Trustee under the 2003A Bond Indenture will survive, and the Bond Trustee will retain such rights, powers and duties under the 2003A Bond Indenture as may be necessary and convenient for the payment of amounts due or to become due on the 2003A Bonds and the registration, transfer and exchange of 2003A Bonds as provided in the 2003A Bond Indenture. Nevertheless, any moneys held by the Bond Trustee for the payment of the principal of or interest on any Bond remaining unclaimed for two years after the principal of all 2003A Bonds has become due and payable, whether at maturity or otherwise, will then be paid to the Energy Commission, and the owners of any 2003A Bonds not theretofore presented for payment will thereafter be entitled to look only to the Energy Commission for payment thereof and all liability of the Bond Trustee or the Authority with respect to such moneys will thereupon cease. However, all such amounts payable by the Energy Commission under the 2003A Bond Indenture will be payable only from amounts derived from the 2003A Collateral.

## **MASTER TRUST AGREEMENT**

### **Issuance of Bonds; Security for Bonds**

Issuance of Bonds. Subject to determination from time to time by the Authority by resolutions of the Authority and in Bond Indentures of the Authority, and the issuance by the Energy Commission of a Series Certificate relating to such Series of Bonds (as set forth in the Master Trust Agreement), the Authority may issue Series of Bonds which, except to any extent otherwise provided in the related Bond Indenture, will be secured under the Master Trust Agreement. Each Series of Bonds will bear the designations, be in the form, have the terms and provisions, be issued upon the conditions, be secured and in all other respects be as set forth in the related Bond Indenture.

#### Conditions to Securing Bonds under the Master Trust Agreement

(a) In order for any Series of Bonds issued after the date of the Master Trust Agreement to be secured by the Master Trust Agreement, prior to or simultaneously with the authentication and delivery of the Series of Bonds, the Master Trustee will receive the following:

(a) an original executed counterpart of the Series Certificate, in substantially the form attached to the Master Trust Agreement as Exhibit A

(i) stating that the Series of Bonds is entitled to the benefits of the Master Trust Agreement; and

(ii) directing the Master Trustee as to the creation of any funds and accounts to be established for the Series of Bonds which are in addition to those required under the Master Trust Agreement.



(b) an original executed counterpart or a copy, certified by an Authority Representative and an Energy Commission Representative, of the Master Trust Agreement and the related Secured Loan Agreement, and an original executed counterpart or a copy, certified by an Authority Representative, of the related Bond Indenture.

(b) The Master Trustee is not required to receive duplicate counterparts or copies pursuant to paragraph (a) if any of the items required by paragraph (a) have been received by the Master Trustee, whether as Master Trustee or in its capacity as a Bond Trustee.

Liability under Bonds. Each Series of Bonds, and interest thereon, will be limited obligations of the Authority secured solely by the Collateral pledged under the related Bond Indenture. The Bonds do not constitute or create an indebtedness or liability of any Borrower, the State or any political subdivision thereof, other than the Authority, and will not constitute a pledge of the faith and credit of the State of California or any political subdivision, other than the Authority, but will be payable solely from the funds provided for in the Bond Indenture. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof is pledged to the payment of the principal of or interest on the Bonds. No covenant, stipulation, obligation or agreement contained in the Master Trust Agreement or in the Bonds will be deemed to be a covenant, stipulation obligation or agreement of any present or future trustee, officer, member, director, employee or agent of the Authority or the Energy Commission in his or her individual capacity.

## **Establishment and Application of Funds and Accounts**

### Creation and Custody of Funds and Accounts

(a) There is pursuant to the Master Trust Agreement created and ordered to be established and held by the Master Trustee the following accounts:

- (i) a Master Reserve Account, and
- (ii) a Master Rebate Account.

(b) The Energy Commission may, by a Supplemental Master Trust Agreement, Series Certificate or other Officer's Certificate, subject to the approval of the Authority, establish one or more subaccounts under the Master Reserve Account and the Master Rebate Account under the Master Trust Agreement for the purpose of complying with federal tax requirements. Each such subaccount created from time to time under the Master Trust Agreement will have such further designations as the Master Trustee deems appropriate in order to properly account for all moneys subject to the Master Trust Agreement or as provided in an Officer's Certificate.

(c) As security for the payment of each Series of Bonds, the Energy Commission and the Authority pledge and assign the Master Reserve Account and all amounts from time to time on deposit therein, for the equal and pro rata benefit of all Series of Bonds, in the manner and to the extent provided in the Master Trust Agreement to the Master Trustee.

(d) The pledge and assignment effected by the Master Trust Agreement will be valid and binding from the date of execution and delivery of the Master Trust Agreement, the moneys so pledged and assigned and hereafter received by the Master Trustee will be subject to the lien of such pledge and assignment and such lien will be a continuing, irrevocable and exclusive first lien and will be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Master Trustee irrespective of whether a such parties have notice thereof.



Deposits to Master Reserve Account. There will be deposited into the Master Reserve Account transfers from the Surplus Repayments Accounts held by the Bond Trustees and transfers from the Debt Service Reserve Accounts held by the Bond Trustees. All amounts deposited to such Master Account, together with earnings thereon, will be applied as provided in the Master Trust Agreement.

Withdrawals from Master Reserve Account. Upon receipt of notice of a shortfall in one or more Debt Service Accounts, the Master Trustee shall ascertain if the amounts in the Master Reserve Account are sufficient to pay all amounts requested by Bond Trustees. If amounts on deposit in the Master Reserve Account are not sufficient to pay all amounts requested by all Bond Trustees, the Master Trustee shall (i) notify each Bond Trustee on or before the Business Day before any Bond Payment Date that amounts in the Master Reserve Account are not sufficient to pay the entire amount requested, and (ii) notify each such Bond Trustee of the proportionate amount which will be available for transfer on the next Business Day. On the Business Day prior to any Bond Payment Date, the Master Trustee will transfer to a Bond Trustee, for deposit in the Debt Service Account for the related Series of Bonds, the amount certified by the Bond Trustee to be necessary, or available, to timely make the payment of principal and interest on that Series of Bonds on the next Bond Payment Date. Within two Business Days following any Bond Payment Date, the Master Trustee will transfer, at the written direction of the Authority, the balance of amounts held in the Master Reserve Account, in excess of the Cumulative Deficiency, to or upon the order of the Energy Commission, unless a Bond Trustee has requested any amounts to pay Administrative Expenses, in which case such amounts will be paid first (and pro rata if more than one Bond Trustee has made the request and there are no sufficient amounts to make full payment of all such requests). If and to the extent the Bond Trustee for any Series of Bonds certifies to the Master Trustee that any Deficiency has been replenished, moneys on deposit in the Master Reserve Account will be released, at the written direction of the Authority, to the extent not needed to cure any other Deficiency or to pay Administrative Expenses as aforesaid, to the Energy Commission, free and clear of the lien created by the Master Trust Agreement or to such other fund or account held by the Master Trustee under the Master Trust Agreement as may be directed in writing by an Authority Representative.

So long as the balance in the Master Reserve Account is less than the Cumulative Deficiency, investment earnings on funds on deposit in the Master Reserve Account will be deposited into the Master Reserve Account or, to the extent directed in writing by an Authority Representative, into the related Rebate Fund.

Deposits to and Withdrawals from the Master Rebate Account. Pursuant to the Tax Agreement for any Series of Bonds, the Energy Commission has covenanted to calculate and pay directly to the government of the United States of America all amounts due for payment of “arbitrage rebate” under Section 148(f) of the Internal Revenue Code with respect to such Series of Bonds. Accordingly, the Authority hereby directs the Master Trustee to deposit in the Rebate Account for each respective Series of Bonds, or in the Master Rebate Account established under the Master Trust Agreement, amounts of excess earnings on such funds as more particularly described in the respective Tax Agreement. The Master Rebate Account is a trust fund, but amounts therein do not constitute part of the Trust Estate. Amounts on deposit in the Master Rebate Account may be used solely to make payments to the United States of America under Section 148 of the Internal Revenue Code and to pay costs related to the calculation of the amounts due. Any amounts remaining in the Master Rebate Account upon satisfaction of all rebate obligations payable to the United States will be transferred to the Master Reserve Account.

Investments. Moneys held in accounts created under the Master Trust Agreement will be invested, pursuant to written directions of the Authority, in consultation with an Energy Commission Representative, in Permitted Investments maturing at such times and in such amounts as will make cash available for the purposes of such accounts as needed, subject to the restrictions, if any, set forth in the



applicable Tax Agreement. If at any time the Authority has not directed the Master Trustee to make any such investment, such money will be invested in the Permitted Investments described in the Master Trust Agreement, namely the California State Surplus Money Investment Fund.

### **Miscellaneous**

Amendments. The Master Trust Agreement may be amended by a written instrument executed by the Authority, the Energy Commission and the Master Trustee, if: (i) in the sole judgment of the Master Trustee, the amendment does not materially adversely affect the interests of the Bondholders of any Series of Bonds, and (ii) the Authority, the Energy Commission and the Master Trustee receive written confirmation from the Rating Agency that the amendment will not result in the downgrade, qualification or withdrawal of its credit rating on any Series of Bonds. In exercising its judgment the Master Trustee may rely on the opinion of such counsel as it may select.



## FORM OF OPINION OF BOND COUNSEL



of bondholders, its right, title and interest in moneys pledged as security to the bond trustee for each series of Master Trust Revenue Bonds that may be issued by the Authority from time to time, as well as all amounts which may from time to time be paid to or held by the Master Trustee in the master reserve account held under the Master Trust Agreement.

The 2003A Secured Loan Agreement, the 2003A Bond Indenture and the Master Trust Agreement and the rights and obligations of the Authority, the Energy Commission, the Bond Trustee, the Master Trustee, and the registered owners of the 2003A Bonds may be amended or modified in the manner and subject to the conditions and terms set forth in each of those documents.

The Authority and the Energy Commission have also entered into a Tax Certificate and Agreement, dated as of the date hereof (the "Tax Agreement"), in which the Energy Commission has made certain representations concerning its current and future compliance with provisions of the Internal Revenue Code of 1986, as amended (the "Code").

We have examined the Authority Act, the Energy Conservation Assistance Act and such other laws of the State of California and of the United States of America as we have deemed necessary, the Resolutions, executed counterparts of the 2003A Secured Loan Agreement, the 2003A Bond Indenture, the Master Trust Agreement, the Tax Agreement, the form of the 2003A Bonds, the transcript of proceedings relating to the sale and issuance of the 2003A Bonds, and opinions, certifications and statements of facts and expectations contained in such transcript, and such other documents and materials as we deem relevant to the opinions expressed herein.

Based upon such examinations, we are of the opinion that:

1. The Authority is an authority and public instrumentality of the State of California, duly organized and existing under the laws of the State of California.
2. The 2003A Bonds have been duly authorized, executed and issued.
3. The 2003A Bond Indenture has been duly authorized and executed by the Authority and is valid and binding in accordance with its terms. The 2003A Bond Indenture creates a valid pledge, to secure the payment of the principal of and interest on all 2003A Bonds, of the 2003A Collateral.
4. The Master Trust Agreement has been duly authorized and executed by the Authority and the Energy Commission and is valid and binding in accordance with its terms. The Master Trust Agreement creates a valid pledge of any and all amounts held under the Master Trust Agreement (except the rebate account), for the benefit of the holders of the 2003A Bonds and of any additional series of Master Trust Revenue Bonds that may be issued by the Authority from time to time.
5. The 2003A Bonds are valid and binding limited obligations of the Authority and are not a lien or charge upon the funds or property of the Authority or the Energy Commission, except for the 2003A Collateral. Neither the faith and credit nor the taxing power of the State of California or of any political subdivision thereof is pledged to the payment of the principal of or interest on the 2003A Bonds. The 2003A Bonds are not a debt of the State of California, and said State is not liable for the payment thereof.



6. The 2003A Secured Loan Agreement has been duly authorized and executed by the Authority and the Energy Commission and is valid and binding in accordance with its terms.

7. Assuming compliance by the Authority and the Energy Commission with certain covenants in the 2003A Bond Indenture, the Master Trust Agreement, the 2003A Secured Loan Agreement and the Tax Agreement and certain requirements of the Code regarding the use, expenditure and investment of proceeds of the 2003A Bonds and the timely payment of certain investment earnings to the United States, interest on the 2003A Bonds is not includable in the gross income of the owners of the 2003A Bonds for purposes of federal income taxation.

8. Interest on the 2003A Bonds is not treated as an item of tax preference in calculating federal alternative minimum taxable income of individuals and corporations; interest on the 2003A Bonds, however, is included as an adjustment in the calculation of federal corporate alternative minimum taxable income and may therefore affect a corporation's alternative minimum tax liability. We express no opinion regarding other federal income tax consequences caused by the ownership of, or the receipt of interest on, the 2003A Bonds.

9. Interest on the 2003A Bonds is exempt from present State of California personal income taxes.

Certain requirements and procedures contained or referred to in the 2003A Bond Indenture, the Master Trust Agreement, the 2003A Secured Loan Agreement, the Tax Agreement or other relevant documents relating to the Bonds may be changed, and certain actions may be taken, under the circumstances and subject to the terms and conditions set forth in such documents, upon the advice or with the approving opinion of counsel nationally recognized in the area of tax-exempt obligations. We express no opinion as to the exclusion of interest on the 2003A Bonds from gross income for federal income tax purposes on and after the date on which any such change occurs or action is taken upon the advice or approval of counsel other than this firm.

With respect to the opinions expressed herein, the enforceability of the rights and obligations under the 2003A Bonds, the 2003A Bond Indenture, the Master Trust Agreement, the 2003A Secured Loan Agreement, and the Tax Agreement are subject to bankruptcy, insolvency, moratorium and other laws affecting the enforcement of creditors' rights generally, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations contained in State law regarding legal remedies against State agencies. We express no opinion with respect to any indemnification, contribution, choice of law, choice of forum or waiver provisions contained in the foregoing documents.

In rendering this opinion we have relied upon the opinion of William M. Chamberlain, Esq., Chief Counsel to the Energy Commission, with respect to the authorization, execution and delivery by the Energy Commission of the Master Trust Agreement and the 2003A Secured Loan Agreement. We have also relied upon covenants, representations and certifications of facts, estimates and expectations made by the Authority and the Energy Commission which we have not independently verified.

Respectfully submitted,



## APPENDIX D

### FORM OF CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (this “Disclosure Agreement”) is executed by and between the California Energy Resources Conservation and Development Commission (the “Energy Commission”) and the Treasurer of the State of California (the “Treasurer”), as Dissemination Agent (the “Dissemination Agent”) in connection with the issuance of \$28,005,000 principal amount of California Consumer Power and Conservation Financing Authority Energy Efficiency Master Trust Revenue Bonds, Series 2003A (the “Bonds”). The Bonds are being issued pursuant to a Bond Indenture, dated as of April 1, 2003 (the “2003A Bond Indenture”), between the California Consumer Power and Conservation Financing Authority (the “Authority”) and the Treasurer, as Bond Trustee (the “Bond Trustee”). The net proceeds of the Bonds are being loaned by the Authority to the Energy Commission pursuant to a 2003A Secured Loan Agreement dated as of April 1, 2003 (the “2003A Secured Loan Agreement”) between the Authority and the Energy Commission. Pursuant to Section 5.6 of the Secured Loan Agreement, the Energy Commission and the Dissemination Agent covenant and agree as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Energy Commission and the Dissemination Agent for the benefit of the holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

The Energy Commission and the Dissemination Agent acknowledge that the Authority has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Disclosure Agreement and has no liability to any Person, including any holder or Beneficial Owner of the Bonds, with respect to the Rule.

SECTION 2. Definitions. In addition to the definitions set forth in APPENDIX A to the 2003A Bond Indenture, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Affiliate” shall mean, with respect to any first person or entity, any second person or entity which controls, is controlled by, or is under common control with such first person or entity.

“Annual Report” shall mean any Annual Report provided by the Energy Commission pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person that (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Disclosure Representative” shall mean the Executive Director of the Energy Commission, or his or her designee, or such other Person as the Energy Commission shall designate in writing to the Dissemination Agent and the Bond Trustee from time to time.



“Dissemination Agent” shall mean the Treasurer of the State of California, or any successor Dissemination Agent designated in writing by the Energy Commission to the Bond Trustee which has filed with the Energy Commission and the Bond Trustee a written acceptance of such designation.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“National Repository” shall mean any Nationally Recognized Municipal Securities Information Repository for purposes of the Rule. The National Repositories currently approved by the Securities and Exchange Commission are set forth in Exhibit C hereto or as otherwise shown at “<http://www.sec.gov/info/municipal/nrmsir.htm>.”

“Participating Underwriter” shall mean the original underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“Repository” shall mean each National Repository and each State Repository.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State” shall mean the State of California.

“State Repository” shall mean any public or private repository or entity designated by the State as a state repository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission.

### SECTION 3. Provision of Annual Reports.

(a) Not later than March 15 of each year, which is fifteen (15) Business Days prior to the Report Date described in Section 3(b) below, the Energy Commission shall provide the Annual Report to the Dissemination Agent and the Bond Trustee (if the Bond Trustee is not the Dissemination Agent). The Energy Commission shall provide a written certification with the Annual Report furnished to the Dissemination Agent and the Bond Trustee to the effect that such Annual Report constitutes the Annual Report required to be furnished by the Energy Commission hereunder. The Dissemination Agent and Bond Trustee may conclusively rely upon such certification of the Energy Commission. If by fifteen (15) Business Days prior to such date, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Energy Commission and the Bond Trustee (if the Bond Trustee is not the Dissemination Agent) to notify the Energy Commission and the Bond Trustee (if the Bond Trustee is not the Dissemination Agent) of the requirements of this subsection (a) and subsection (b) below.

(b) The Dissemination Agent shall provide, not later than April 1 of each year (the “Report Date”), commencing with the report due on or before April 1, 2004 for the 2002-03 fiscal year, to each Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement, with a copy to the Bond Trustee. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement. If either the Energy Commission’s fiscal year or the Report Date changes, the Energy Commission shall give notice of such change in the same manner as for a Listed Event under Section 5(d).



(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the Repositories by the date required in subsection (a), the Dissemination Agent shall send a notice to each Repository in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(i) determine each year prior to the date for providing the Annual Report the name and address of each National Repository and the State Repository, if any; and

(ii) file a report with the Energy Commission, the Authority and (if the Dissemination Agent is not the Bond Trustee) the Bond Trustee which shall, to the extent the Energy Commission has provided the Dissemination Agent with the Annual Report, certify to the Energy Commission that the Annual Report has been provided to the Repositories pursuant to this Disclosure Agreement, state the date it was provided, and list all the Repositories to which it was provided.

#### SECTION 4. Content of Annual Reports.

(a) The Annual Report shall contain or include by reference the following:

(i) The audit report of the Energy Commission for the 2003A Program Loans as they then exist as of the end of the fiscal year most recently ended, prepared in accordance with Section 5.5 of the 2003A Secured Loan Agreement and with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the Energy Commission's audit report is not available by the Report Date, the Annual Report shall contain an unaudited report in a format similar to the audit report of the Energy Commission for the preceding fiscal year, and the audit report shall be filed in the same manner as the Annual Report when it becomes available.

(ii) The statistical information contained in the section of the Official Statement dated March 27, 2003, pertaining to the Bonds (the "Official Statement") entitled "THE PROGRAM—ECA Account Program History" for the most recent fiscal year;

(iii) The statistical information contained in the section of the Official Statement entitled "THE PROGRAM—Loan Repayments" for the most recent fiscal year;

(iv) The information contained in the section of the Official Statement entitled "LITIGATION—The Energy Commission" for the most recent fiscal year.

(v) The information contained in APPENDIX A to the Official Statement, in the table entitled "Listing of Initial 2003A Program Loans" as of the end of the most recent fiscal year; and

(vi) Any additional information required to be provided by the Energy Commission if and to the extent the Energy Commission is provided by the Participating Underwriter or the Bond Trustee with an opinion of nationally recognized bond counsel to the effect that pursuant to subsequent interpretative releases or regulations of the United States Securities and Exchange Commission, applicable case law, or similar authority, such additional information is required to be provided under the Rule.



Any or all of the items listed above may be included by specific reference to other documents, including official statements of any debt issues of the Energy Commission, or related public entities, that have been submitted to each of the Repositories or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board. The Energy Commission shall clearly identify each such other document so included by reference.

#### SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the upon delivery of the information to the Dissemination Agent by the Energy Commission, the Dissemination Agent shall give, notice of the occurrence of any of the following events with respect to the Bonds, if material:

1. Principal and interest payment delinquencies.
2. Non-payment related defaults.
3. Modifications to rights of holders of the Bonds.
4. Optional, contingent or unscheduled bond calls.
5. Defeasances.
6. Rating changes.
7. Adverse tax opinions or events affecting the tax-exempt status of the Bonds.
8. Unscheduled draws on the debt service reserves reflecting financial difficulties.
9. Unscheduled draws on any credit enhancements reflecting financial difficulties.
10. Substitution of any credit or liquidity providers or their failure to perform.
11. Release, substitution or sale of any property or assets securing repayment of the Bonds.

(b) The Bond Trustee shall promptly, after obtaining actual knowledge of the occurrence of any of the Listed Events, without any responsibility for any determination of materiality, contact the Disclosure Representative, inform such person of the event, and request that the Energy Commission promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to subsection (f). For purposes of this Disclosure Agreement, “actual knowledge” of such Listed Events shall mean knowledge by an officer of the Bond Trustee at its corporate trust office with regular responsibility for matters related to the 2003A Bond Indenture and Bonds.

(c) Whenever the Energy Commission obtains knowledge of the occurrence of a Listed Event, whether because of a notice from the Bond Trustee pursuant to subsection (b) above or otherwise, the Energy Commission shall as soon as possible determine if such event would be material under applicable federal securities laws.

(d) If the Energy Commission determines that knowledge of the occurrence of a Listed Event would be material under applicable federal securities laws, the Energy Commission shall promptly notify



the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (f).

(e) If in response to a request under subsection (b), the Energy Commission determines that the Listed Event would not be material under applicable federal securities laws, the Energy Commission shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (f).

(f) If the Dissemination Agent has been instructed by the Energy Commission to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the Municipal Securities Rulemaking Board and the State Repository, with a copy to the Energy Commission and the Bond Trustee. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(4) and (5) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to Owners of affected Bonds pursuant to the 2003A Bond Indenture.

SECTION 6. Termination of Reporting Obligation. The Energy Commission's, the Bond Trustee's and the Dissemination Agent's obligations under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Energy Commission shall give notice of such termination in the same manner as for a Listed Event under Section 5(f). If the Energy Commission's obligations under the 2003A Secured Loan Agreement are assumed in full by some other entity, such entity shall be responsible for compliance with this Disclosure Agreement in the same manner as if it were the Energy Commission's, and the Energy Commission shall have no further responsibility hereunder.

SECTION 7. Dissemination Agent. The Energy Commission may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent may resign at any time by providing at least thirty (30) days written notice to the Energy Commission and the Bond Trustee. If a successor Dissemination Agent is appointed to assist the Energy Commission in carrying out its obligations, under this Disclosure Agreement, such successor Dissemination Agent shall execute an acceptance of duties as Dissemination Agent in the form attached as Exhibit B. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Energy Commission pursuant to this Disclosure Agreement. The initial Dissemination Agent shall be the Treasurer of the State of California, Sacramento, California.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the Energy Commission and the Dissemination Agent, with the consent of the Bond Trustee, may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and



(c) The amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided in the 2003A Bond Indenture for amendments to the 2003A Bond Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Energy Commission shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information and/or operating data being presented by the Energy Commission. In addition, if the amendment relates to the accounting principles to be followed in preparing audit report, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(f); (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the audit report as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles; and (iii) the conditions described in paragraphs (a), (b) and (c) above shall not be required to be satisfied.

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Energy Commission from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Energy Commission chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Energy Commission shall have no obligation under this Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the Energy Commission, the Dissemination Agent or the Bond Trustee to comply with any provision of this Disclosure Agreement the Bond Trustee may (and, at the request of any Participating Underwriter or the Owners of at least 25% aggregate principal amount of Outstanding Bonds, the Bond Trustee shall, but only to the extent indemnified by the Energy Commission and only to the extent that such indemnification is permitted by law, hereunder or pursuant to the 2003A Secured Loan Agreement or 2003A Bond Indenture to its satisfaction from any liability or expense, including reasonable attorney's fees and expenses and any additional fees and charges of the Bond Trustee), or any holder or Beneficial Owner of the Bonds may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Energy Commission to comply with its obligations under this Disclosure Agreement. Upon any such default, the Bond Trustee shall promptly notify (and confirm in writing) the Authority of such event, but the Authority shall have no duties pursuant to this Disclosure Agreement as a result of being so notified. A default under this Disclosure Agreement shall not be deemed a default under the 2003A Bond Indenture or the 2003A Secured Loan Agreement, and the sole remedy under this Disclosure Agreement in the event of any failure of the Energy Commission, the Dissemination Agent or the Bond Trustee to comply with this Disclosure Agreement shall be an action to compel performance. No holder or Beneficial Owner of the Bonds may institute such action, suit or proceeding to compel performance unless they shall have first delivered to the Energy Commission satisfactory written evidence of their status as such, and a written notice of and request to cure such failure, and the Energy Commission shall have refused to comply therewith within a reasonable time. Any indemnification or expenses provided by the Energy Commission pursuant to this Section 10 is strictly limited to the Energy Commission's right in the 2003A Collateral, as defined in the 2003A Secured Loan Agreement.



SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent and Bond Trustee. The Dissemination Agent and the Bond Trustee shall have only such duties as are specifically set forth in this Disclosure Agreement. To the extent permitted by law, the Energy Commission agrees to indemnify and save the Dissemination Agent and the Bond Trustee, their officers, directors, employees and agents harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of their powers and duties hereunder, including the costs and expenses (including reasonable attorney's fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's or Bond Trustee's negligence or willful misconduct. Any indemnification or expenses provided by the Energy Commission pursuant to this Section 11 is strictly limited to the Energy Commission's right in the 2003A Collateral, as defined in the 2003A Secured Loan Agreement. The obligations of the Energy Commission under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds. Once the duties assigned to it are performed, the Bond Trustee shall not be responsible to any person for any failure of the Energy Commission or the Dissemination Agent, if other than the Bond Trustee, to perform duties or obligations imposed hereby. Article VII of the 2003A Bond Indenture is hereby made applicable to this Disclosure Agreement, and the Bond Trustee shall be entitled to the compensation, protections, limitations from liability and indemnities afforded the Bond Trustee thereunder.

The Dissemination Agent and the Bond Trustee shall have no duty or obligation to review any information provided to them by the Energy Commission hereunder and shall not be deemed to be acting in any fiduciary capacity for the Energy Commission, the holders or Beneficial Owners or any other person or entity.

SECTION 12. Notices. Any notices or communications to or among any of the parties to this Disclosure Agreement may be given via first class mail, return receipt requested, overnight courier or confirmed facsimile to the addresses shown on Exhibit C hereto.

SECTION 13. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Authority, the Energy Commission, the Bond Trustee, the Dissemination Agent, the Participating Underwriter, and holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 14. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Date: [Closing Date]



IN WITNESS WHEREOF, the Energy Commission and the Treasurer have caused this Continuing Disclosure Agreement to be executed in their respective names and capacities all as of the date shown above.

CALIFORNIA ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT  
COMMISSION

By: \_\_\_\_\_  
Executive Director

TREASURER OF THE STATE OF CALIFORNIA,  
as Dissemination Agent

By: \_\_\_\_\_  
Deputy Treasurer  
For State Treasurer, Philip Angelides

Approved:

TREASURER OF THE STATE OF CALIFORNIA,  
as Bond Trustee

By: \_\_\_\_\_  
Deputy Treasurer  
For State Treasurer, Philip Angelides



## EXHIBIT A

### NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: California Consumer Power and Conservation Financing Authority (“Authority”).

Name of Bond Issue: \$28,005,000 California Consumer Power and Conservation Financing Authority Energy Efficiency Master Trust Revenue Bonds, Series 2003A.

Date of Issuance: [Closing Date].

NOTICE IS HEREBY GIVEN that the California Energy Resources Conservation and Development Commission (the “Energy Commission”) has not provided an Annual Report with respect to the above-named Bonds as required by Section 5.6 of the 2003A Secured Loan Agreement relating to the Bonds, dated as of April 1, 2003, between the Authority and the Energy Commission. The Energy Commission anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_

\_\_\_\_\_  
as Dissemination Agent on behalf of the  
Commission

By: \_\_\_\_\_  
Authorized Signatory

cc: California Energy Resources Conservation and Development Commission  
California Consumer Power and Conservation Financing Authority  
Bond Trustee



## **EXHIBIT B**

### **ACCEPTANCE OF DUTIES AS DISSEMINATION AGENT**

The undersigned, duly authorized officer of [Name of Successor Dissemination Agent] (the "Dissemination Agent") hereby accepts the duties and obligations imposed upon the undersigned as Dissemination Agent under the Continuing Disclosure Agreement, dated as of \_\_\_\_\_, 2003, between the California Energy Resources Conservation and Development Commission and the Treasurer of the State of California, as initial Dissemination Agent.

The principal office of the Dissemination Agent is \_\_\_\_\_.

Dated: \_\_\_\_\_

[NAME OF SUCCESSOR DISSEMINATION  
AGENT], as successor Dissemination Agent

By: \_\_\_\_\_  
Authorized Officer

cc: California Energy Resource Conservation and Development Commission  
California State Treasurer, as Bond Trustee or any successor Bond Trustee



## **EXHIBIT C**

### **Addresses as of [Closing Date]**

#### **NRMSIRs:**

For purposes of the Securities and Exchange Commission Rule 15c2-12(b)(5), under the Securities Exchange Act of 1934, the Securities and Exchange Commission website ([www.sec.gov](http://www.sec.gov)) sets forth a current list of Nationally Recognized Municipal Securities Information Repositories. The following is a list of Nationally Recognized Municipal Securities Information Repositories as of the date of this Agreement:

Bloomberg Municipal Repositories  
100 Business Park Drive  
Skillman, NJ 08558  
Telephone: (609) 279-3225  
Facsimile: (609) 279-5962  
E-Mail: [Munis@Bloomberg.com](mailto:Munis@Bloomberg.com)  
[http://www.bloomberg.com/markets/muni\\_contactinfo.html](http://www.bloomberg.com/markets/muni_contactinfo.html)

FT Interactive Data  
Attn: NRMSIR  
100 William Street  
New York, NY 10038  
Telephone: (212) 771-6999  
Facsimile: (212) 771-7390  
(Secondary Market Information)  
(212) 771-7391  
(Primary Market Information)  
E-Mail: [NRMSIR@FTID.com](mailto:NRMSIR@FTID.com)  
<http://www.interactivedata.com>

#### **DISSEMINATION AGENT:**

Treasurer of the State of California  
California State Treasurer's Office  
915 Capitol Mall, Room 261  
Sacramento, CA 95814

#### **BOND TRUSTEE:**

California State Treasurer's Office  
Public Finance Division  
915 Capitol Mall, Room 261  
Sacramento, California 95814  
Telephone: (916) 653-2903  
Facsimile: (916) 657-4827

Standard & Poor's J.J. Kenny Repository  
55 Water Street  
45th Floor  
New York, NY 10041  
Telephone: (212) 438-4595  
Facsimile: (212) 438-3975  
E-Mail: [nrmsir\\_repository@sandp.com](mailto:nrmsir_repository@sandp.com)  
[http://www.jjkenny.com/jjkenny/pser\\_descrip\\_data\\_rep.html](http://www.jjkenny.com/jjkenny/pser_descrip_data_rep.html)

DPC Data Inc.  
One Executive Drive  
Fort Lee, NJ 07024  
Telephone: (201) 346-0701  
Facsimile: (201) 947-0107  
E-Mail: [nrmsir@dpcdata.com](mailto:nrmsir@dpcdata.com)  
<http://www.dpcdata.com>

#### **MSRB:**

Municipal Securities Rulemaking Board  
1640 King Street, Suite 300  
Alexandria, VA 22314-2719  
Telephone: (202) 223-9503  
Facsimile: (703) 683-3634

#### **ENERGY COMMISSION:**

California Energy Commission  
1516 Ninth Street, MS 39  
Sacramento, California 95814  
Telephone: (916) 654-5070  
Facsimile: (916) 654-4304



**AUTHORITY**

California Consumer Power and Conservation

Financing Authority

901 P Street, Suite 142A

Sacramento, California 95814

Telephone: (916) 651-9750

Facsimile: (916) 651-9595



## **APPENDIX E**

### **BOOK-ENTRY ONLY SYSTEM**

The following information concerning The Depository Trust Company (“DTC”), New York, New York and DTC’s book-entry system has been obtained from sources the Authority and the Energy Commission believe to be reliable. However, neither the Authority nor the Energy Commission take any responsibility as to the accuracy or completeness thereof and neither the DTC Indirect Participants nor the Beneficial Owners should rely on the following information with respect to such matters but should instead confirm the same with DTC or the DTC Direct Participants, as the case may be. There can be no assurance that DTC will abide by its procedures or that such procedures will not be changed from time to time.

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity of the Bonds, and will be deposited with DTC or deposited and held by the Bond Trustee pursuant to DTC procedures.

DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 2 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 85 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC, in turn, is owned by a number of Direct Participants of DTC and Members of the National Securities Clearing Corporation, Government Securities Clearing Corporation, MBS Clearing Corporation, and Emerging Markets Clearing Corporation, (NSCC, GSCC, MBSCC, and EMCC, also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor’s highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant



through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting right to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Authority or the Bond Trustee, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, nor of its nominee, the Bond Trustee, or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Authority or the Bond Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Authority or the Bond Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.



The Authority and the Energy Commission may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Authority and the Energy Commission believe to be reliable, but neither the Authority nor the Energy Commission take any responsibility for the accuracy thereof.

**The Authority and the Energy Commission cannot and do not give any assurances that DTC will distribute to Participants or that Participants or others will distribute to the Beneficial Owners payments of principal of and interest on the Bonds paid or any notices or that they will do so on a timely basis or will serve and act in the manner described in this Official Statement. Neither the Authority nor the Energy Commission is responsible or liable for the failure of DTC or any Participant or Indirect Participant to make any payments or give any notice to a Beneficial Owner with respect to the Bonds or any error or delay relating thereto.**

**Neither the Authority, the Energy Commission, the Bond Trustee nor the Master Trustee will have any responsibility or obligation to Participants, to Indirect Participants or to any Beneficial Owner with respect to (i) the accuracy of any records maintained by DTC, any Participant, or any Indirect Participant; (ii) the payment by DTC or any Participant or Indirect Participant of any amount with respect to the principal of or interest on the Bonds; (iii) any notice which is permitted or required to be given to holders under the Bond Indenture; (iv) any consent given or other action taken by DTC as Bondholder; or (v) any other procedures or obligations of DTC, Participants or Indirect Participants under the book-entry system.**



## ***SUMMARY OF 2003A ACCOUNTS***

**Please note that the following synopsis is provided as a courtesy only and should be used as a tool. It is not intended to supersede or supplement the governing documents and assumes the following: (1) only one series of bonds is outstanding, (2) the State Treasurer's Office continues to serve as the Bond Trustee/Master Trustee, and (3) all funds are automatically invested in the State's Surplus Money Investment Fund. Updates to this document will be provided if needed. All capitalized terms have the same meaning as set forth in Appendix A Defined Terms, Exhibit A of the Tax Certificate and Agreement and the Continuing Disclosure Agreement. The following abbreviations will be used in this Summary: 1) 2003A Bond Indenture = "Indenture"; 2) Master Trust Agreement = "MTA"; 3) Secured Loan Agreement = "SLA"; 4) Continuing Disclosure Agreement = "CDA"; 5) Tax Certificate and Agreement = "Tax Cert"; 6) 2003A Bonds = "Bonds".**

### **I. LOAN REPAYMENT ACCOUNT**

- A. The Energy Commission will deposit into the Loan Repayment Account, promptly after receipt, all 2003A Program Loan Repayments and any other amounts received with respect to the 2003A Program Loans. (SLA Section 3.7 (d) and 4.2 and Indenture Section 402 (a))
- B. On each Bond Payment Transfer Date, the Energy Commission shall deliver to the Bond Trustee and the Authority a statement showing, for each 2003A Program Loan, all payments received since the last such statement, or since the Date of Delivery (in the case of the first such statement), specifically itemizing (i) the amount of any regularly scheduled principal and interest paid with respect to such loan, (ii) the amount of any prepayment of such loan, (iii) the outstanding principal balance of such loan as of the date of such statement, and (iv) if applicable, whether such loan is delinquent and in what amount. (SLA Section 3.7 (e)).
- C. Amounts in the Loan Repayment Account will be applied by the Authority to pay Administrative Expenses as they become due and payable. If at any time the amount on deposit in the Loan Repayment Account is insufficient to pay any Administrative Expenses as they become due and payable, the Authority shall notify the Bond Trustee, the Master Trustee and the Energy Commission of the amount of any insufficiency, and the Bond Trustee shall request the Master Trustee to deposit into the Loan Repayment Account any amounts required to pay such Administrative Expenses from any moneys available under the Master Trust Agreement. (Indenture Section 402 (b) and SLA Section 4.2 (b))



- D. Not later than the Bond Payment Transfer Date, the Authority shall transfer (or cause the Bond Trustee to transfer) (i) to the Debt Service Account held under the Indenture the amount required, after taking into account any interest earnings on the Debt Service Account and the Debt Service Reserve Account which will be on deposit in the Debt Service Account as of such Bond Payment Date, to pay principal and interest on the Bonds due on such Bond Payment Date, and (ii) to cause the amount in the Debt Service Reserve Account to equal the 2003A Debt Service Reserve Requirement. (Indenture Section 402(c) and SLA Section 4.2 (c))

No failure of the Bond Trustee to provide the statement required under Section III (B) hereof shall relieve the Authority of any obligation to transfer funds in the amounts and at the times required by this Section II.

- E. All amounts on deposit in the Loan Repayment Account, after making the transfers required above in this section, shall be transferred into the Surplus Repayments Account. (Indenture Section 402 (e) and SLA Section 4.2 (e))
- F. Interest earnings on the Loan Repayment Account will remain in the account. (Indenture Section 402(a) and SLA 4.2(a))

## **II. BOND FUNDED LOAN REPAYMENTS**

- A. Amounts received by the Commission as the principal and interest on the Bond-Funded Loans will be deposited into a subaccount of the Energy Conservation Assistance Account, invested in temporary investments and then used to make additional Bond-Funded Loans to Borrowers. [The Commission shall maintain records noting that the source of funding for such additional Bond-Funded Loans is the proceeds of the Series 2003A Bonds. This requirement shall apply to all subsequent recycled Bond-Funded Loan repayments, until such time as the 2003A Bonds are no longer outstanding or such Bond-Funded Loans are pledged to the payment of additional series of bonds. The composite Yield on the Bond-Funded Loans and the 2003a Program Loan Obligations must be within 1 ½% of the Yield on the Bonds. In the event the Bond-Funded Loans are pledged to an additional series of bonds, the composite Yield on all loans pledged to such series and loans funded from the proceeds of such series must be within 1 ½% of the Yield on such series. The Energy Commission shall also maintain records noting amounts payable as principal and interest on such loans.] All or a portion of the interest on the Bond-Funded Loans may be used by the Energy Commission to pay certain administrative expenses of the Energy Commission in operating and carrying out the Program. None of the principal of the Bond-Funded Loans will be so used. Both the principal and interest on the Bond-Funded Loans to be used to make Bond-Funded Loans may be invested at an unrestricted yield for a period of up to three months from the date of deposit of such amounts to the Energy Conservation Assistance Account for



the purpose of making additional Bond-Funded Loans. (Tax Cert Section 3.1 and Section 5.6)

### **III. DEBT SERVICE ACCOUNT**

- A. \$27,126.90, representing accrued interest on the Bonds, was deposited into the Debt Service Account upon the issuance of the Bonds. Moneys deposited in the Debt Service Account shall be applied by the Bond Trustee solely to pay interest on and principal of the 2003A Bonds as the same becomes due. Any excess amounts remaining after such payment on any Bond Payment Date shall be transferred to the Surplus Repayments Account. (Indenture Section 403 (a) and SLA Section 4.3 (a))
- B. Approximately 15 Business Days prior to a Bond Payment Date, the Bond Trustee shall send to the Authority and the Energy Commission, a statement of the amounts which the Authority will need to transfer for deposit into the Debt Service Account prior to the next Bond Payment Date. (Indenture Section 403 (b) and SLA Section 4.3 (b))

### **IV. DEBT SERVICE RESERVE ACCOUNT**

- A. \$6,000,000.00 was deposited in the Debt Service Reserve Account upon the issuance of the Bonds. Funds on deposit in the Debt Service Reserve Account will be used to pay debt service on the Bonds in the event moneys on deposit in the Debt Service Account shall be insufficient to pay the principal and interest on the Bonds as the same become due. If on any Bond Payment Transfer Date there are insufficient moneys in the Loan Repayment Account and the Surplus Repayments Account to make the transfer required in I D. (i) above, the Authority is required to transfer (or cause the Bond Trustee to transfer) the amount of such deficiency. The Authority is required to immediately notify (or cause the Bond Trustee to immediately notify) the Master Trustee of the amounts so transferred from the Debt Service Reserve Account and the cumulative amount of the deficiency in the Debt Service Reserve Account as of such date. No action is necessary by the Energy Commission to make this payment. In addition, if on any Bond Payment Transfer Date, there are insufficient amounts to make the transfer required in I D. (i) above, after making the transfer from the Surplus Repayments Account and the Debt Service Reserve Account, the Authority is required to immediately notify (or cause the Bond Trustee to immediately notify) the Master Trustee and the Energy Commission of the amount of any shortfall, and the Bond Trustee shall direct the Master trustee to deposit into the debt Service Account any amounts required to pay any principal or interest on the 2003A Bonds on the Bond Payment Date. (Indenture Sections 4.2 (d) and 4.4(b) and SLA Sections 402 (d) and 404 (b))



- B. On each principal payment date, and after making or providing for any transfers in (A) above, the Authority shall direct the Bond Trustee to transfer from the Debt Service Reserve Account to the Master Trustee any amount in excess of the 2003A Debt Service Reserve Requirement.
- C. So long as the amount on deposit in the Debt Service Reserve Account shall equal the 2003A Debt Service Reserve Requirement, no further deposits to the Debt Service Reserve Account shall be required. If the Authority ever requests the Bond Trustee to withdraw funds from the Debt Service Reserve Account to prevent a default as herein provided, and if the Bond Trustee consents thereto and the withdrawal of such funds reduces the amount on deposit in the Debt Service Reserve Account to less than the 2003A Debt Service Reserve Requirement, the Bond Trustee shall notify the Master Trustee and request that the deficiency be held in the Master Reserve Account. If the Debt Service Reserve Account is subsequently replenished from 2003A Loan Repayments, the Bond Trustee shall notify the Master Trustee of such replenishment.
- D. In determining the amounts to be transferred to or from the Debt Service Reserve Account pursuant to this Section, the Authority shall rely upon a certificate of an Energy Commission Representative and the Energy Commission covenants to provide such certificates on a timely basis. (Indenture Section 404 and SLA Section 4.4)
- E. An amount up to [    ], or maximum annual debt service on the Bonds, may be invested at an unrestricted yield. To the extent of amounts in the Debt Service Reserve Account are in excess of maximum annual debt service, such amounts must be yield restricted, but are eligible for yield reduction payments.(Tax Cert 3.2 ©)

## **V. SURPLUS REPAYMENTS ACCOUNT**

- A. If on the Bond Payment Transfer Date, there are insufficient moneys in the Loan Repayment Account to make the transfer required by I. D. (i) above, the Authority will transfer (or cause the Bond Trustee to transfer), the amount of such deficiency, to the extent available, from the Surplus Repayments Account.
- B. Subject to A. above, the Authority will transfer (or will cause the Bond Trustee to transfer) from the Surplus Repayments Account to the Master Trustee (i) the amount in such account in excess of the amount necessary to deliver the Cash Flow Certificate which certificate the Energy Commission will deliver to the Bond Trustee and the Authority on or before each Bond Payment Date, less (ii) any amounts required by the Energy Commission, as stated in a certificate of an Energy Commission Representative, to pay administrative and legal costs related to the Bonds and compliance with the terms of the SLA, the Master and



the Indenture including, without limitation, implementation of the Program and making of new loans with proceeds.

- C. The amounts described in B. above shall be disbursed [by the Authority] from the Surplus Repayments Account by the Bond Trustee upon receipt of a requisition therefor executed by an Energy Commission Representative. Amounts remaining in the Surplus Repayments Account on the final Bond Payment Date shall be transferred to the Master Trustee and applied according to the Master Trust Agreement. (SLA Section 4.5 and Indenture Section 405)

## **VI. COST OF ISSUANCE ACCOUNT**

- A. \$482,025.00 was deposited into the Cost of Issuance Account upon the issuance of the Bonds. Amounts on deposit in the Cost of Issuance Account shall be paid out from time to time by the Authority, as instructed by the Bond Trustee and approved by the Energy Commission, to pay Costs of Issuance. At such time as the Bond Trustee is advised in writing by the Authority Representative that all Costs of Issuance have been paid, and in any case not later than six months from the Date of Delivery, the Bond Trustee shall notify the Energy Commission of the balance in the Cost of Issuance Account and shall transfer any moneys remaining in the Cost of Issuance Account to the Energy Commission for deposit into the Program Loan Account, and the Cost of Issuance Account shall be closed. (Indenture Section 406 and SLA Section 4.6)

## **VII. REBATE ACCOUNT**

- A. No amounts shall initially be deposited in the Rebate Account. Pursuant to the Tax Cert, the Energy Commission has covenanted to calculate and pay directly to the government of the United States of America all amounts due for payment of “arbitrage rebate”. The Energy Commission may in the future request the Authority to deposit with the Bond Trustee or direct the Bond Trustee to deposit in the Rebate Account amounts held in any fund or account. Any amounts remaining in the Rebate Account upon satisfaction of all rebate obligations payable to the United States shall be transferred to the Loan Repayment Account. (Indenture Section 407 and SLA Section 4.7)
- B. The Energy Commission shall maintain or cause to be maintained the records relating to the Investments it controls that are required. The Energy Commission shall also be responsible for performing all rebate and/or penalty calculations for Nonpurpose Investments acquired with Gross Proceeds held under the Indenture as to which it has investment responsibility. (Tax Cert Section 4.1)



- C. Amounts held in the Rebate Account, to the extent funded with amounts other than proceeds derived from the sale of the Bonds and investment earnings thereon, may be invested without regard to yield. (Tax Cert Section 3.6)

#### **VIII. PROGRAM LOAN ACCOUNT**

- A. \$28,540,200.10 was deposited into the Program Loan Account upon the issuance of the Bonds. Amounts in this account shall be disbursed by the Bond Trustee to the Energy Commission to fund program Loans to public entities and for other purposes authorized by the Energy Conservation Assistance Act. Loans made from Bond proceeds ("Bond-Funded Loans") will be made to eligible Borrowers pursuant to Bond-Funded Borrower Loan Agreements and each Borrower will complete a Borrower Tax Certificate. All amounts disbursed to Borrowers under the Bond-Financed Loans will be effected on a "reimbursement" basis, meaning that a Borrower must have expended moneys on property constituting a capital expenditure and permitted under the Program and then have submitted to the Energy Commission (a) documentation providing an adequate description of the property for which reimbursement is being sought in order to enable the Energy Commission to evaluate and determine whether such property qualifies for loan financing under its program, and (b) evidence that payment of the expenditure with respect to such property has been duly made by such Borrower. (Indenture Sections 408 and 409, Tax Cert Sections 2.1 and 2.4.)

#### **IX. INVESTMENT OF MONEYS**

- A. Interest accruing on each fund or account and any profit realized from such Permitted Investments shall be credited to the Debt Service Account, unless otherwise stipulated herein, and any loss resulting from such Permitted Investments shall be charged to the fund or account from which such moneys originally came. Investments shall be valued at cost. Unless otherwise directed pursuant to written directions of the Authority in consultation with an Energy Commission Representative, the Bond Trustee shall invest all funds in the State's Surplus Money Investment Fund.

#### **MASTER TRUST AGREEMENT**

#### **X. MASTER RESERVE ACCOUNT**

- A. Transfers from the Surplus Repayments Accounts and the Debt Service Reserve Accounts held by the Bond Trustees shall be deposited into the Master Reserve Account.



- B. Upon receipt of notice of a shortfall in one or more Debt Service Accounts, the Master Trustee shall ascertain if the amounts in the Master Reserve Account are sufficient to pay all amounts requested by the Bond Trustees. If amounts on deposit in the Master Reserve Account are not sufficient to pay all amounts requested by all Bond Trustees, the Master Trustee shall (i) notify each Bond Trustee on or before the Business Day before any Bond Payment Date that amounts in the Master Reserve Account are not sufficient to pay the entire amount requested, and (iii) notify each such bond trustee of the proportionate amount which will be available for transfer on the next Business Day. On the Business Day prior to any Bond Payment Date, The Master Trustee will transfer to a Bond Trustee the amount certified by the Bond Trustee to be necessary, or available to timely make the bond debt service payment.
- C. Within two Business Days following any Bond Payment Date, the Master Trustee shall transfer, at the written direction of the Authority, the balance of amounts held in the Master Reserve Account, in excess of the Cumulative Deficiency, to or upon the order of the Energy Commission, unless a Bond Trustee has requested any amounts to pay Administrative Expenses, in which case such amounts shall be paid first (and pro rata if more than on Bond Trustee has made the request and there are no sufficient amounts to make full payment of all such requests.)
- D. If and to the extent a Bond Trustee certifies to the Master Trustee that any Deficiency has been replenished, to the extent such amounts are not needed to cure any other Deficiency or to pay Administrative Expenses, such amounts shall be released at the written direction of the Authority, to the Energy Commission or to such other fund or account held by the Master Trustee as may be directed in writing by an Authority Representative. (Master Sections 302 and 303)
- E. To the extent amounts are on deposit in the Master Reserve Account due to a Deficiency on a particular issue of bonds, including the Bonds, such amounts will be yield-restricted, and/or subject to arbitrage rebate, based on the yield on such issue of bonds. (Tax Cert Section 3.2 (D))

## **XI. MASTER REBATE ACCOUNT**

- A. The Master Trustee is directed to deposit in the Rebate Account for each respective Series of Bonds, or in the Master Rebate Account, amounts of excess earnings on such funds as more particularly described in the respective Tax Agreement. Amounts on deposit in the Master Rebate Account may be used solely to make payments under Section 148 of the



Code and to pay costs related to the calculation of the amounts due. Any amounts remaining in the Master Rebate Account upon satisfaction of all rebate obligations shall be transferred to the Master Reserve Account. (Master Section 304)

- B. Amounts held in the Master Rebate Account, to the extent funded with amounts other than proceeds derived from the sale of the Bonds and investment earnings thereon, may be invested without regard to yield. (Tax Cert Section 3.6)

## **XII. INVESTMENTS**

- A. Moneys held in Master Trust accounts shall be invested, pursuant to written directions of the Authority in consultation with an Energy Commission Representative, in Permitted Investments, subject to any restrictions in the applicable Tax Agreement. If the Authority has not directed the Master Trustee to make any such investment, such money shall be invested in the State Surplus Money Investment Fund.
- B. So long as the balance in the Master Reserve Account is less than the Cumulative Deficiency, investment earnings on funds on deposit in the Master Reserve Account shall be deposited into the Master Reserve Account, or to the extent directed in writing by an Authority Representative, into the related Rebate Account. (Master Sections 303 and 305)



TAX CERTIFICATE AND AGREEMENT

Dated as of April 10, 2003

between

CALIFORNIA CONSUMER POWER AND CONSERVATION  
FINANCING AUTHORITY

and

CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

Relating to

\$28,005,000  
California Consumer Power and Conservation  
Financing Authority  
Energy Efficiency Master Trust Revenue Bonds  
Series 2003A

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\$28,005,000  
California Consumer Power and Conservation Financing Authority  
Energy Efficiency Master Trust Revenue Bonds  
Series 2003A

**TAX CERTIFICATE AND AGREEMENT**

This Tax Certificate and Agreement (the “Tax Agreement”) is executed by and between the California Consumer Power and Conservation Financing Authority (the “Authority”), an authority and public instrumentality of the State of California (the “State”), and the California Energy Resources Conservation and Development Commission (the “Energy Commission”), a State commission established and existing under and by virtue of the laws of the State of California, pursuant to Sections 5.1 and 5.3 of the 2003A Secured Loan Agreement and Section 505 of the 2003A Bond Indenture (as such documents are hereinafter defined) in connection with the issuance of the \$28,005,000 California Consumer Power and Conservation Financing Authority Energy Efficiency Master Trust Revenue Bonds, Series 2003A (the “Bonds”). In this Tax Agreement, the Authority and the Energy Commission are setting forth their expectations as of the date hereof concerning the use of proceeds of the Bonds and the procedures undertaken to ensure that the proceeds of the Bonds are invested, used and applied in compliance with applicable provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder (the “Treasury Regulations”). Capitalized terms used but not defined in this Tax Agreement shall have the meanings set forth in Exhibit A attached hereto or in Appendix A to the 2003A Bond Indenture.

**Recitals**

The Authority and the Energy Commission have determined to provide funds, through the issuance of the Bonds, to make or finance loans to certain borrowers, as hereafter described.

The Code, the Treasury Regulations (including final, temporary and proposed regulations) promulgated thereunder and the rulings with respect thereto impose certain limitations on the use and operation of the property financed with the proceeds of the Bonds and on the use and investment of proceeds of the Bonds and certain other moneys relating to the Bonds.

Such provisions of the Code and the Treasury Regulations promulgated thereunder and the rulings with respect thereto set forth certain conditions under which the interest paid and to be paid on the Bonds will not be included in gross income for federal income tax purposes.

The Authority and the Energy Commission have determined to deliver this Tax Agreement, inclusive of exhibits, to set forth certain facts and estimates that form the basis for the Authority’s reasonable expectations as to the use and investment of proceeds of the Bonds and of certain other moneys relating to the Bonds and to set forth certain terms and conditions relating thereto in order to assure that interest on the Bonds is not included in gross income for federal income tax purposes.



## ARTICLE I.

### GENERAL

Section 1.1. Purpose of Tax Agreement. The undersigned are executing this Tax Agreement on behalf of the Authority and the Energy Commission with the understanding and acknowledgement that Sidley Austin Brown & Wood LLP, bond counsel (referred to herein as “Bond Counsel”), will rely on the representations and the certifications made in this Tax Agreement in rendering its opinion that interest on the Bonds is excluded from gross income for federal income tax purposes.

Section 1.2. Description of Bonds. The Bonds will be issued and secured pursuant to a Bond Indenture, dated as of April 1, 2003 (the “2003A Bond Indenture”), by and between the Authority and the Treasurer of the State of California (the “Treasurer”), as bond trustee (the “Bond Trustee”), a Master Trust Agreement, dated as of April 1, 2003 (the “Master Trust Agreement”), by and among the Authority, the Energy Commission and the Treasurer, as master trustee (the “Master Trustee”), and a Secured Loan Agreement, dated as of April 1, 2003 (the “2003A Secured Loan Agreement”), by and between the Authority and the Energy Commission. The date, maturities, denominations, rates of interest and redemption features of the Bonds are described in the 2003A Bond Indenture.

Section 1.3. Governmental Purpose. The proceeds derived from the sale of the Bonds, together with investment earnings thereon, will be used to make a loan (the “Secured Loan”) to the Energy Commission pursuant to the 2003A Secured Loan Agreement. Such proceeds will be further loaned by the Energy Commission, which, pursuant to Chapter 5.2 of Division 15 of the California Public Resources Code (the “Energy Conservation Assistance Act”), has the responsibility to administer an energy efficiency loan program (the “Program”), the purpose of which is to make loans (each a “Bond-Funded Loan” and collectively the “Bond-Funded Loans”) to eligible public entity (*i.e.*, Governmental Person) borrowers (each a “Borrower” and collectively the “Borrowers”) for energy conservation and efficiency projects pursuant to individual borrower loan agreements (each a “Borrower Loan Agreement” and collectively the “Borrower Loan Agreements”). The Energy Commission will use the proceeds of the Bonds to provide financial assistance to eligible Borrowers located throughout the State, evidenced by an obligation or obligations of the Borrowers to make loan repayments to the Energy Commission (the “Loan Repayments”). Each Borrower will use such financial assistance directly to finance the capital costs of acquisition, installation and implementation of energy conservation Project (each a “Borrower Project” and collectively the “Project”). The Bonds will be secured by, among other things certain existing loans heretofore originated by the Energy Commission (each an “Existing Loan” and collectively the “Existing Loans”) pursuant to individual Borrower Loan Agreements. For purposes of this Tax Agreement, the Borrower Loan Agreements relating to Bond-Funded Loans may be referred to herein as the Bond-Funded Borrower Loan Agreements, and the Borrower Loan Agreements relating to Existing Loans may be referred to herein as the Existing Loan Agreements. Where a Borrower has previously borrowed funds from the Energy Commission derived from amounts other than the proceeds of the Bonds or any other tax-exempt obligation and will borrow funds from the Energy Commission derived from the proceeds of the Bonds, the loan made to such Borrower, for purposes of this Tax Agreement, will be characterized and referred to herein as a Bond-Funded Loan. The term “Borrower” may be used



herein to refer to both Borrowers with respect to Bond-Funded Loans and Borrowers with respect to Existing Loans. Unless the context requires otherwise in this Tax Agreement, the term Borrower will ordinarily refer to Borrowers with respect to Bond-Funded Loans.

Section 1.4. Sale and Issuance of Bonds. The Bonds are being delivered on April 10, 2003 (the “Issue Date”) to Goldman, Sachs & Co. (the “Underwriter”), for resale to the general public. The Underwriter is delivering good funds in exchange for the Bonds on the Issue Date. Public Financial Management has served as independent financial advisor to the Authority (the “Authority Financial Advisor”), and Lamont Financial Services Corporation has served as independent financial advisor to the Energy Commission (the “Commission Financial Advisor”) with respect to the issuance of the Bonds.

Section 1.5. Composite Issue. All the Bonds are being sold at the same time, have been sold pursuant to the same plan of financing, and are reasonably expected to be paid from substantially the same source of funds. Accordingly, the Bonds are a single issue of obligations for certain federal income tax purposes relating to the exclusion from gross income of interest on the Bonds. No other governmental obligations which are reasonably expected to be paid from substantially the same source of funds are being sold at substantially the same time and sold pursuant to the same plan of financing as the Bonds.

Section 1.6. Reliance on Other Parties. To the extent the Authority and/or the Energy Commission makes any representation in this Tax Agreement concerning any action to be taken or expected to be taken by any Borrower of amounts representing Bond proceeds, each does so in reliance on the representations of such Borrowers set forth in the Borrower Tax Certificate which the Energy Commission will require each Borrower to execute prior to receiving any Bond proceeds, a form of which is attached hereto as Exhibit D. The Authority and the Energy Commission each believe that such reliance is reasonable and prudent. Neither the Authority nor the Energy Commission is aware of any fact or circumstance that would cause either to question the accuracy or reasonableness of any representation, certification or decision made in this Tax Agreement or the exhibits hereto.

The expectations of the Authority concerning uses of proceeds of the Bonds and other moneys described herein are based exclusively upon representations and certifications of the Energy Commission. With regard to covenants of the Authority to act or refuse to act in a certain manner in the future, the Authority is exclusively relying on the Energy Commission to act or refuse to act in the appropriate manner except to the extent a particular action by the Authority is required or prohibited (*e.g.*, the Authority must actually execute and file any Form 8038-G information return that is required).

Section 1.7. Reasonable Expectations. The Authority and the Energy Commission have investigated the facts, estimates, and circumstances surrounding the issuance of the Bonds. To the best of the Authority’s and the Energy Commission’s knowledge and belief, such facts, estimates and circumstances are true, correct, and complete, and their expectations are reasonable. Any statements in this Tax Agreement involving future events, whether or not expressly so stated, are intended as expectations of the Authority and the Energy Commission and not representations of fact. On the basis of such facts, estimates, and circumstances, the Authority and the Energy Commission expect that the Gross Proceeds of the Bonds will not be



used in a manner that would cause the Bonds to be considered “private activity bonds” under Section 141 of the Code or “arbitrage bonds” under Section 148 of the Code. The Authority’s investigation of the facts, estimates and circumstances was limited, in its entirety, to assurances furnished to the Authority by the Energy Commission.

Section 1.8. Authority of Signatories. The undersigned are duly authorized officials of the Authority and the Energy Commission, respectively, each charged, with others, with responsibility for the execution, delivery, and issuance of the Bonds.

## ARTICLE II.

### USE OF BOND PROCEEDS

Section 2.1. No Private Use of Bond Proceeds. Based on representations of the Borrowers of amounts representing Bond proceeds and the terms and provisions of the Program, the Energy Commission represents as follows:

(A) In General. No more than the lesser of 10% of the Proceeds Net of Costs of the Bonds or the Project (based on the cost of the components of the Project or, with respect to a unitary structure, on the relative fair rental value of such components) has been or will be used in the aggregate for any activities that constitute a Private Use. No more than 10% of the principal of or interest on the Bonds, under the terms thereof or any underlying arrangement, has been or will be secured by any interest in property (whether or not a Project) used for a Private Use or in payments in respect of property used for a Private Use, or will be derived from payments in respect of property used for a Private Use. The Borrowers in their Borrower Tax Certificates will each covenant that the facilities financed with proceeds of the Bonds will not involve any Private Use. Should the Energy Commission hereafter be approached by a Borrower regarding the potential for Private Use of any Project other than as delineated above, the Energy Commission may consult with Bond Counsel before authorizing any such Private Use. The proceeds of the Bonds will be loaned only to Governmental Persons. None of the proceeds of the Bonds will be loaned to any other entity, including an organization described in Section 501(c)(3) of the Code. Sales or other dispositions of the Project or any portion thereof by any Borrower shall be governed by Section 2.6 below.

(B) No Private Loan Financing. No more than the lesser of 5% of the Proceeds Net of Costs of the Bonds or \$5,000,000 will be used to make or finance loans to any person other than to Governmental Persons.

(C) Management and Service Contracts. With respect to management and service contracts that pertain to any portion of the Project, the determination of whether a particular use constitutes Private Use will be determined on the basis of applying Section 1.141-3(b)(4) of the Treasury Regulations and Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-28 I.R.B. 38 (collectively, “Revenue Procedure 97-13.” For purposes of determining the nature of a Private Use, any arrangement that is properly characterized as a lease for federal income tax purposes is treated as a lease. Each Borrower in its Borrower Tax Certificates will covenant that



its will not permit there to be a management or service contract with a person other than a Governmental Person with respect to its Borrower Project except as permitted by law, which is intended to mean that such contract complies with Revenue Procedure 97-13. Further, each Borrower will represent, in its Borrower Tax Certificate, that, as of the date of the execution of such Borrower's Loan, the Borrower is not a party to any management or service contract with a person other than a Governmental Person with respect to its Borrower Project, except for a contract that complies with the Revenue Procedure 97-13. Should the Energy Commission hereafter be approached by a Borrower regarding a management or service contract pertaining to any property financed with proceeds of the Bonds, the Energy Commission may consult with Bond Counsel before authorizing the Borrower to proceed with such contract.

Section 2.2. Calculation of Bond Proceeds. The net amount derived from the sale of the Bonds is \$29,049,352.00 (representing the par amount of the Bonds of \$28,005,000.00, plus net original issue premium of \$1,310,685.10, plus Accrued Interest in the amount of \$27,126.90, less Underwriter's Discount of \$293,460.00).

Section 2.3. Application and Deposit of Bond Proceeds. The following states the expectations of the Energy Commission with respect to the amount and uses of the proceeds derived from the sale of the Bonds and certain other moneys or property:

(A) \$27,126.90 of such amount, representing Accrued Interest, will be deposited on the Issue Date to the Debt Service Account and used on or before September 1, 2003, to pay a portion of the interest on the Bonds;

(B) \$482,025.00 of such amount will be deposited on the Issue Date to the Cost of Issuance Account and used within six months to pay costs incurred in connection with the issuance of the Bonds; and

(C) \$28,540,200.10 of such amount will be deposited on the Issue Date to the Program Loan Account and used by the Energy Commission within three years to make loans to Borrowers to finance the various facilities of the Borrowers that constitute the Project.

The Authority and the Energy Commission covenant to use the proceeds of the Bonds and the other amounts described above solely for the above-described purposes, unless a written opinion of Sidley, Austin Brown & Wood LLP is obtained to the effect that a use of Bond proceeds for other than the above-described purposes will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes.

Section 2.4. Program Loan Account. The proceeds of the Bonds to be used to finance costs of Project will be held in the Program Loan Account pending their use. Eligible Project are to be funded by the Energy Commission by periodically transferring funds to the Borrowers pursuant to a cost-reimbursement disbursement process while the Eligible Project is being constructed. The Borrowers of Bond proceeds will not be entitled to any earnings received from investments of amounts held in the Program Loan Account. All amounts disbursed to Borrowers under the Bond-Funded Loans will be effected on a "reimbursement" basis, meaning that a



Borrower must have expended moneys on property constituting a capital expenditure and permitted under the Program and then have submitted to the Energy Commission (a) documentation providing an adequate description of the property for which reimbursement is being sought in order to enable the Energy Commission to evaluate and determine whether such property qualifies for loan financing under its program, and (b) evidence that payment of the expenditure with respect to such property has been duly made by such Borrower. The Energy Commission will review such expenditure and determine whether and in what amount proceeds of the Bonds may be disbursed to the Borrower. No amounts will be disbursed to a Borrower prior to the expenditure being made by the Borrower.

Section 2.5. Pooled Financing Bond Temporary Period. The proceeds derived from the sale of the Bonds, together with investment earnings thereon, will be used to make loans to two or more unrelated persons. Accordingly, the proceeds derived from the sale of the Bonds may be invested at an unrestricted yield for a period of six months from the date hereof.

Section 2.6. No Sale or Disposition of Project. Each Borrower will covenant, in its Borrower Tax Certificate, that, during the time the Borrower's Bond-Funded Loan is outstanding, it shall not sell or dispose of any portion of its Borrower Project to an entity that is not a Governmental Unit. In the event the Borrower sells or disposes of the Borrower Project or any portion thereof to a Governmental Unit, the Borrower shall, upon such sale or disposition, repay the Loan or portion thereof allocable to the Project or portion thereof, as the case may be, and shall apply any proceeds it derives from the sale of the Project or portion thereof, as the case may be, to such repayment.

Section 2.7. Expected Demand for Bond-Funded Loans. The Energy Commission has prepared a report, entitled *Loan Demand Analysis Report*, dated March 7, 2003, in which the Energy Commission sets forth seven factors supporting its reasonable expectations that all of the proceeds derived from the sale of the Bonds, net of amounts to be used to pay Costs of Issuance, will be used within three years of the date hereof to disburse funds under Bond-Funded Loans to Borrowers. Accordingly, the Authority and the Energy Commission reasonably expect that there is sufficient demand for proceeds of the Bonds in a time frame that will satisfy the requirement of federal income tax law, including Sections 148 and 149 of the Code. For each draw of proceeds of the Bonds made to fund any portion of any Loan, the Energy Commission shall ensure that each invoice submitted by any Borrower is reviewed and that no money is disbursed under such Loan for any purpose other than an actual capital expenditure previously paid by such Borrower. The Energy Commission acknowledges that, as provided in the Borrower Tax Certificate, no portion of any proceeds of the Bonds will be disbursed to any Borrower either for any loans or investments made by the Borrower or to pay the principal of or interest on any debt obligation of the Borrower.

### ARTICLE III.

#### PAYMENT OF DEBT SERVICE ON THE BONDS

Section 3.1. Expected Sources of Payment of Debt Service on the Bonds and Application of Bond-Funded Loan Payments. The Energy Commission expects to make payments of principal of and interest on the Bonds from payments and prepayments received



with respect to the Existing Loans, as provided for in the 2003A Secured Loan Agreement, but not from Loans financed with proceeds of the Bonds. Subject to the use of certain amounts as provided in the next sentence, amounts received by the Commission as the principal of and interest on the Bond-Funded Loans will be deposited into a subaccount of the Energy Conservation Assistance Account, invested in temporary investments and then used to make additional Bond-Funded Loans to Borrowers. All or a portion of the interest on the Bond-Funded Loans may be used by the Commission to pay certain administrative expenses of the Commission in operating and carrying out the Program. None of the principal of the Bond-Funded Loans will be so used. Both the principal of and interest on the Bond-Funded Loans to be used to make Bond-Funded Loans may be invested at an unrestricted yield for period of up to three months from the date of deposit of such amounts to the Energy Conservation Assistance Account for the purpose of making additional Bond-Funded Loans.

Section 3.2. Funds and Accounts Established for Payment of Debt Service on the Bonds. The Energy Commission represents the following with respect to the expected sources of payment of debt service on the Bonds:

(A) Separate Funds, Accounts and Subaccounts. The 2003A Bond Indenture provides that moneys in any fund or account therein relating to the Program are to be held separate and apart from any other moneys held therein. To accomplish such separation, separate trust accounts within the Energy Conservation Assistance Account created pursuant to the Energy Conservation Assistance Act and subaccounts in such funds or accounts are or will be maintained for moneys relating to the Program. The Master Trust Agreement provides that each series of bonds issued under the related Bond Indenture will be secured separate and apart from any other series of bonds issued under a Bond Indenture, except that all amounts on deposit in the Master Reserve Account created under the Master Trust Agreement will be available for the payment of debt service, if needed, on any series of bonds issued under any Bond Indenture related to the Program (“Master Trust Revenue Bonds”).

(B) Loan Repayment Account and Debt Service Account. The 2003A Secured Loan Agreement directs the Energy Commission to transfer to the Bond Trustee, for deposit into the Loan Repayment Account, all 2003A Loan Repayments promptly after receipt thereof. Fifteen days before the due date of any payment of interest on or principal of the Bonds, the Bond Trustee is to withdraw from the Loan Repayment Account and deposit into the Debt Service Account the amount needed to pay required interest on or principal of the Bonds, all as provided in the 2003A Bond Indenture.

(C) Debt Service Reserve Account. The Debt Service Reserve Account was established pursuant to the 2003A Bond Indenture. Amounts may be withdrawn from such account from time to time solely for the purpose of making up any deficiency in the Debt Service Account, as defined in Section 3.3 below. The Debt Service Reserve Account will be funded with \$6,000,000.00 of existing moneys contributed by the Energy Commission on the date hereof. To the extent the Debt Service Reserve Account does not exceed the least of 10% of the proceeds of the Bonds, maximum annual debt service on the Bonds and 125% of average annual debt service on the Bonds, amounts in the Debt Service Reserve Account may be invested at an unrestricted yield. To the extent



amounts in the Debt Service Reserve Account are in excess of the least of such amounts, such amounts must be yield-restricted, but would be eligible for yield reduction payments pursuant to Section 1.148-5(c) of the Treasury Regulations. The Underwriter has represented in Exhibit B that the funding of the Debt Service Reserve Account in such amount provides a source of security that facilitates the marketing of the Bonds at the interest rates provided thereon, which rates are comparable to those of bond issues of a similar character, is a vital factor in marketing the Bonds, and is not in excess of the amount necessary for such purpose. The term “proceeds” for purposes of this subsection means the stated principal amount of the Bonds unless the Bonds have been sold and issued to the public with more than De Minimis Discount or Premium.

(D) Master Reserve Account. In addition to amounts in the Debt Service Reserve Account created under the 2003A Bond Indenture, all amounts on deposit in the Master Reserve Account created under the Master Trust Agreement will be available for the payment of debt service, if needed, on any series of Master Trust Revenue Bonds. As of the date hereof, there are no amounts in the Master Reserve Account. To the extent amounts are pledged to a particular issue of bonds, including the Bonds, such amounts would be yield-restricted, and/or subject to arbitrage rebate, based on the yield on such issue of bonds, including the Bonds.

Section 3.3. Qualification of Certain Funds and Accounts as a Bona Fide Debt Service Fund. Amounts in the Loan Repayment Account will constitute a Bona Fide Debt Service Fund for the Bonds (the Loan Repayment Account may hereinafter be referred to as the Bona Fide Debt Service Fund). Amounts in the Surplus Repayments Account will not constitute a Bona Fide Debt Service Fund as amounts therein may be held therein for a substantial period of time. The Energy Commission does not expect to pay current debt service on the Bonds from any source other than the Bona Fide Debt Service Fund. Amounts so held in the Bona Fide Debt Service Fund may be invested at an unrestricted yield until used to pay debt service on the Bonds, for a period not to exceed 13 months from the date of deposit of such amounts to the Bona Fide Debt Service Fund.

Section 3.4. No Other Funds Established for Payment of Debt Service on the Bonds. Other than the funds and accounts described or referenced in this Article III, the Authority and the Energy Commission have neither created or established nor intend to create or establish any sinking fund, reserve fund or similar fund for the payment of debt service on the Bonds or any other fund or account that may be pledged as security or collateral for the Bonds or that are reasonably expected to be used for the payment of principal and interest on the Bonds and for which there is a reasonable assurance that amounts on deposit therein will be available for the payment of principal and interest on the Bonds if the Energy Commission or the Borrowers encounter financial difficulties. Each Borrower will certify in its Borrower Tax Certificate that, except as provided in the next sentence, the Borrower shall not set aside any moneys to pay debt service on its Loan in advance of such payments. The Borrower may, if it chooses to do so, set aside moneys in a fund or account in advance of a debt service payment date, but only where the Borrower makes such set-aside no more than one year prior to the time such money will be needed, such that any moneys so set aside, together with investment earnings thereon, will be used within one year of such set-aside to pay debt service on the Loan. Any fund or account so established for such purpose will be depleted no less frequently than annually. Accordingly,



such funds or accounts, if any, would also qualify as part of the Bona Fide Debt Service Fund for the Bonds. The Borrower shall make no other set-aside, nor establish any other fund or account, that is reasonably expected to pay debt service on the Loan or that is otherwise pledged as collateral for the Loan so as to create a reasonable assurance that amounts represented by such set-aside, or in such fund or account, would be available to pay debt service on the Loan in the event the Borrower were to encounter financial difficulties.

Section 3.5. No Negative Pledges. Aside from the Debt Service Reserve Account, there are no amounts held under any agreement to maintain amounts at a particular level for the direct or indirect benefit of the holders of the Bonds or guarantor of the Bonds, if any, excluding for this purpose amounts in which the Energy Commission (or a substantial beneficiary) may grant rights that are superior to the rights of the holders of the Bonds or guarantor of the Bonds, if any, and amounts that do not exceed reasonable needs for which they are maintained and as to which the required level is tested no more frequently than every six months and that may be spent without any substantial restriction other than a requirement to replenish the amount by the next testing date.

Section 3.6. Rebate Account(s). Amounts deposited in the Rebate Account established under the 2003A Bond Indenture or the Master Rebate Account established under the Master Trust Agreement are to assist the Authority and the Energy Commission with compliance of Section 148(f) of the Code. Moneys in the Rebate Account and the Master Rebate Account are neither pledged to nor expected to be used to pay debt service on the Bonds. Proceeds of the Bonds are not expected to be held in the Rebate Account. Amounts held in the Rebate Account or the Master Rebate Account, to the extent funded with amounts other than proceeds derived from the sale of the Bonds and investment earnings thereon, may be invested without regard to Yield.

## ARTICLE IV.

### GENERAL INVESTMENT AND REBATE RESPONSIBILITY

Section 4.1. Investment Restrictions and Arbitrage Rebate Requirement. The exclusion of the interest on the Bonds from the gross income of bondholders for federal income tax purposes depends in part on compliance with the arbitrage limitations imposed by Section 148 of the Code with respect to the investment of the proceeds of the Bonds. These limitations include (i) the general arbitrage restrictions described in Article V, (ii) the Yield Reduction Payments described in Sections 5.4 and 5.5 below, (iii) the arbitrage rebate requirement described in Article VI, and (iv) the prohibition on federal guarantees set forth in Article VIII. Subject to these limitations, and except as otherwise provided with respect to any Borrower of amounts representing Bond proceeds, the Authority shall direct, in consultation with the Energy Commission, the investment of all amounts held respectively under the 2003A Bond Indenture, including amounts held in the Program Loan Account, at all times until such amounts are allocated to expenditures in the manner specified by the accounting provisions of Section 1.148-6(d) of the Regulations. The Energy Commission shall maintain or cause to be maintained the records relating to the Investments it controls that are hereinafter required. The Energy Commission shall also be responsible for performing all rebate and/or penalty calculations for



Nonpurpose Investments acquired with Gross Proceeds held under the 2003A Bond Indenture as to which it has investment responsibility as set forth above.

## ARTICLE V.

### GENERAL ARBITRAGE RESTRICTIONS

Section 5.1. General Rule and the Excepted Amounts. The general arbitrage limitations imposed under Section 148(a) of the Code restrict the spread permitted between (i) the Yield on the Bonds and (ii) the Yield on Investments acquired with Gross Proceeds of the Bonds. The amounts of Gross Proceeds listed below in Subsections 5.1(A) through (F) are excepted from the general arbitrage limitations and, subject to the arbitrage rebate requirements of Section 148(f) of the Code, may be invested without restriction as to Yield to the extent specified herein:

(A) proceeds of the Bonds deposited to the Program Loan Account until six months after the Issue Date;

(B) earnings on Investments held in the Program Loan Account until one year following date of receipt of the amount earned;

(C) amounts in the Debt Service Reserve Account to the extent not exceeding the least of the standards set forth in Section 3.2(C) above;

(D) earnings on investments acquired with Gross Proceeds of the Bonds (including investments held in the Program Loan Account, the Debt Service Reserve Account and the Master Reserve Account) until one year following the date of receipt of the amount earned;

(E) amounts held in the Bona Fide Debt Service Fund for the Bonds as described in Section 3.3 above and the earnings thereon to the extent used to pay debt service on the Bonds until 13 months after the date of initial receipt;

(F) amounts in the Energy Conservation Assistance Account derived from the principal of and/or interest on Bond-Funded Loans until three months from the date of deposit of such principal and interest to the Energy Conservation Assistance Account;

(G) amounts in the Surplus Repayment Account, not more than 30 days from the date of initial receipt; and

(H) proceeds of the Bonds to be used to pay costs incurred in connection with the issuance of the Bonds until 13 months after the Issue Date, or, if earlier, the date they are used for their intended purposes.

Section 5.2. Investment in Tax-Exempt Obligations. Notwithstanding anything contained herein to the contrary, proceeds of the Bonds may be invested without restriction as to Yield and any investment earnings thereon may be expended without regard to the arbitrage rebate requirements of Article VI if such proceeds are invested in Tax-Exempt Obligations.



Section 5.3. Calculation of Yield. The Energy Commission represents the following with respect to the Bonds:

(A) Issue Price. Based on the representations of the Underwriter pertaining to the bona fide public offering of the Bonds (attached hereto as Exhibit B), the Issue Price of the Bonds is \$29,315,685.10 (representing the par amount of the Bonds of \$28,005,000.00, plus net original issue premium of \$1,310,685.10), plus Accrued Interest of \$27,126.90 for a total of \$29,342,812.00.

(B) No Early Redemption. None of the Bonds is subject to optional, mandatory or contingent redemption prior to their respective maturity dates.

(C) Original Issue Discount on Term Bonds. None of the Bonds are term Bonds that require mandatory sinking fund payments on dates prior to their stated maturity.

(D) No Qualified Hedge. Neither the Authority nor the Energy Commission has entered into any hedge or other derivative product with respect to the Bonds.

(E) No Qualified Guarantee. Neither the Authority nor the Energy Commission has entered into any Qualified Guarantee with respect to the Bonds.

(F) Yield on the Bonds. The Bonds are being issued as a Fixed Yield Issue. Accordingly, the Yield on the Bonds has been calculated as the discount rate that, when used in computing the Present Value as of the Issue Date of all unconditionally payable payments of principal and interest on the Bonds, produces an amount equal to the Present Value, using the same discount rate, of the aggregate Issue Price of the Bonds as of the Issue Date. Based on the foregoing, the Yield on the Bonds has been calculated by the Underwriter to be not less than 3.2322%. The Yield on the Bonds will not be affected by subsequent unexpected events, except to the extent provided in Section 1.148-4(h)(3) of the Regulations.

Section 5.4. Investments Subject to Yield Restriction. Nonpurpose Investments not listed in Subsections 5.1(A) through (H) above will be invested at a Yield that is not materially higher than the Yield on the Bonds. The Yield on a Nonpurpose Investment is materially higher than the Yield on the Bonds if it exceeds the Yield on the Bonds (i) by more than .125% if the Nonpurpose Investments are to be used for construction of a Project, or (ii) by any amount if the Nonpurpose Investments are allocated to the Cost of Issuance Account or the Debt Service Reserve Account.

Section 5.5. Yield Reduction Payments. Notwithstanding the provisions of this Tax Agreement that require the Energy Commission to invest the proceeds of the Bonds and investment earnings thereon at a Yield not in excess of the Yield on the Bonds, the Yield on certain Nonpurpose Investments acquired with proceeds of the Bonds will not be considered to be materially higher than the Yield on the Bonds if the Energy Commission makes Yield Reduction Payments to the United States. The Energy Commission covenants to consult with Bond Counsel prior to making any Yield Reduction Payments. Exhibit A sets forth seven situations in which yield reduction payments are allocable as a vehicle to reduce the yield on an



investment. One of such situations would allow the portion of the Debt Service Reserve Account in excess of the standards set forth in Section 3.2(C) to be eligible for the use of yield reduction payments to reduce the yield on the investments held in the Debt Service Reserve Account. Other of such situations, not intending to be exclusive, would allow proceeds derived from the sale of the Bonds qualifying for the temporary period set forth in Section 5.1(A) above and repayments of Bond-Funded Loans deposited in the Energy Conservation Assistance Account to be used to make additional Bond-Funded Loans to Borrowers qualifying for the temporary period set forth in Section 5.1(F) above, to be eligible for the use of yield reduction payments to reduce the yield on the investments in which such proceeds or payments, as the case may be, are invested.

Section 5.6. Program Obligations. The Bond-Funded Loans to Borrowers pursuant to the Borrower Loan Agreements will be classified as program obligations for federal income tax purposes as the Program complies with the provisions of Section 1.148-1(b) of the Regulations. In addition, the Secured Loan will be classified as a program obligation for federal income tax purposes. For purposes of this Section 5.6, the Bond-Funded Loans and the Secured Loan will collectively be referred to as the Purpose Investments. In addition, the Existing Loans will be treated as being part of the Purpose Investments. All such loans qualify as eligible to having a yield up to 1-1/2% above the Yield on the Bonds as a result of the following reason (note for this purpose that the composite Yield on the Bond-Funded Loans and the Existing Loans must be within 1-1/2% of the Yield on the Bonds and not 1-1/2% above the Yield on the Secured Loan):

(A) The program of the Authority, as issuer of the Bonds (the “Authority Program”) involves the origination or acquisition of Purpose Investments, which consist of the Bond-Funded Loans and the Existing Loans;

(B) At least 95% of the cost of all the Purpose Investments acquired under the Program represents the cost of one or more loans to a substantial number of persons representing the general public, states or political subdivisions, 501(c)(3) organizations or any combination of the foregoing;

(C) At least 95% of all of the receipts from the Purpose Investments (other than amounts deposited in the Rebate Account(s)) shall be used (i) to pay principal of or interest on obligations of the Authority that financed the Program, (ii) to pay or reimburse the Authority for administrative costs of issuing such obligations or of the Program, (iii) to pay or reimburse the Authority for anticipated future losses directly related to the Program; (iv) to finance or refinance additional Purpose Investments for the same general purposes of the Program; or (v) to redeem or retire governmental obligations of the Authority at the next earliest possible date of redemption.

(D) The Authority has not waived the right to treat the Purpose Investments as Program Investments; and

(E) No person or related persons, as defined in Code Section 144(a)(3), from whom the Authority or the Energy Commission may acquire Purpose Investments may be permitted to purchase the Bonds or any other obligations of the Authority and the Energy Commission financing the Authority Program and the Program in an amount related to



the amount of the Purpose Investment acquired by the Authority or the Energy Commission from that obligor.

Section 5.7. Economic Life of the Project. Based on the representations of the Borrowers of amounts representing Bond proceeds and the terms and provisions of the Program, the average maturity of the Bonds does not exceed 120% of the average reasonably expected economic life of the Project.

## ARTICLE VI.

### REQUIRED REBATE TO THE UNITED STATES

Section 6.1. Introduction. Section 148(f) of the Code imposes an arbitrage rebate requirement (the “Rebate Requirement”) as a condition to the exclusion of interest on the Bonds from gross income for federal income tax purposes. To comply with the Rebate Requirement, the Authority will be required to periodically rebate to the federal government certain excess earnings received from the investment of the Gross Proceeds of the Bonds in Nonpurpose Investments from the sources described and in the amounts calculated as set forth in Section 6.2 below. The Authority and the Energy Commission agree to comply with each of the procedures described herein in order to meet the Rebate Requirement. To the extent that any of the procedures set forth herein are determined to be inconsistent with any Treasury Regulations governing compliance with the Rebate Requirement, the Treasury Regulations shall control. Other than actions the Authority is specifically required to take (e.g., actual payment of rebate and execution and filing of forms with the IRS in connection therewith), the Energy Commission assumes the Authority’s responsibilities for ensuring that the Rebate Requirement is satisfied.

Section 6.2. Calculation of Rebate Amount. The Rebate Requirement requires the payment to the United States of the excess of the amount earned on the investment of Gross Proceeds in Nonpurpose Investments over the amount that would have been earned on such Investments had the amount so invested been invested at a rate equal to the Yield on the Bonds, together with any income attributable to such excess. Except as provided below in Subsections 6.2(D) through (J), all the Gross Proceeds of the Bonds are subject to this arbitrage rebate requirement. In order to meet this arbitrage rebate requirement, the Energy Commission will take the following actions:

(A) Record of Investments and Expenditures. For each Nonpurpose Investment acquired with or allocated to Gross Proceeds of the Bonds, the Energy Commission will record or cause to be recorded the purchase date or allocation date of such Investment; its purchase price if it is acquired directly with Gross Proceeds or, if not acquired directly with Gross Proceeds, its Value on the date the Nonpurpose Investment is allocated to Gross Proceeds; the accrued interest due on its purchase date or allocation date; its face amount, coupon rate, Yield, and the frequency of its interest payment; its disposition price, the accrued interest due on its disposition date and its disposition date; its Value on the date the Nonpurpose Investment is de-allocated as Gross Proceeds and the date of such de-allocation. In addition, the Energy Commission will record or cause to be recorded the date and amount of all other expenditures of Gross Proceeds of the Bonds, including expenditures for rebate.



(B) Computation of Yield on the Bonds. For each Computation Period, the Energy Commission shall determine the Yield on the Bonds if required by Section 1.148-4(b) of the Regulations, such determination to be accurate to at least four places when expressed as a decimal.

(C) Computation of Rebate Amount. Subject to the special rules set forth in Subsections 6.2(D) through (J), the Energy Commission will determine the Rebate Amount on each Computation Date. The Rebate Amount as of any Computation Date is the excess of the Future Value of all receipts on Nonpurpose Investments (“Nonpurpose Receipts”) over the Future Value of all payments on Nonpurpose Investments (“Nonpurpose Payments”). To the extent amounts received from Nonpurpose Investments are reinvested, these amounts may be netted against each other and not taken into account in the computation of the Rebate Amount. The Energy Commission shall determine the Nonpurpose Receipts and Nonpurpose Payments as described below.

(1) Nonpurpose Payments. Nonpurpose Payments include (i) actual payments (amounts of Gross Proceeds actually or constructively paid to acquire a Nonpurpose Investment including Qualified Administrative Expenses); (ii) “allocation” payments (for a Nonpurpose Investment that is allocated to the Bonds after already having been acquired by the Energy Commission (e.g., as Transferred Proceeds or sinking fund proceeds), an amount equal to the Value of the Investment on the allocation date); (iii) Computation Date payments (for a Nonpurpose Investment allocated to the Bonds at the end of the preceding Computation Period, the Value of the Investment at the beginning of the Computation Period); (iv) Yield Reduction Payments made with respect to Nonpurpose Investments; and (v) the Computation Date Credit.

(2) Nonpurpose Receipts. Nonpurpose Receipts include (i) actual receipts (amounts actually or constructively received with respect to a Nonpurpose Investment, such as earnings and return of principal, reduced by Qualified Administrative Expenses); (ii) “de-allocation” receipts (for a Nonpurpose Investment that ceases to be allocated to the Bonds or subject to rebate, the Value of the Investment on the “de-allocation” date); (iii) Computation Date receipts (the Value of any Nonpurpose Investment held at the end of any Computation Period); and (iv) rebate receipts (any recovery of an overpayment of rebate).

(D) Exception for the Bona Fide Debt Service Fund. Notwithstanding anything in this Section 6.2 to the contrary, as the Bonds are Governmental Bonds and have a weighted average maturity of greater than 5 years and a fixed rate of interest, earnings on Nonpurpose Investments acquired with amounts held in a Bona Fide Debt Service Fund or any part of a Bona Fide Debt Service Fund as described in Section 3.3 above, including any fund or account established by a Borrower for the payment of debt service on its Bond-Funded Loan, shall not be taken into account for purposes of calculating the Rebate Amount.



(E) No Election to Treat Program Loans Separately. For purposes of the spending exceptions to rebate described in Subsections 6.2(F) through (H), the Authority, based on instructions of the Energy Commission, does not elect to treat the financial assistance provided to each Borrower (in the form of Program Loans) separately for purposes of all spending exceptions to the arbitrage rebate requirement. Accordingly, whether any or all of the expenditure exceptions to rebate are satisfied will be determined on the basis of the entire issue of the Bonds and the proceeds thereof.

(F) Exception for Proceeds Spent within 18 Months. The arbitrage rebate requirement will be treated as satisfied with respect to Gross Proceeds of the Bonds if the conditions set forth in this Subsection (F) are satisfied other than with respect to the Debt Service Reserve Account, in an amount not in excess of the least of the standards set forth in Section 3.2(C) above.

(1) Timetable for Expenditures. Subject to the exception for reasonable retainage and de minimis amounts set forth in paragraph 6.2(G)(3) and Subsection 6.2(I) below, respectively, if an 18-Month Borrower expends an amount equal to the Gross Proceeds (as defined in paragraph 6.2(G)(2)), then the arbitrage rebate requirement set forth in Section 148(f) of the Code will be satisfied with respect to such moneys:

<u>Date</u>	<u>Amount of Net Sale Proceeds</u>
Within Six Months of the Issue Date	15%
Within Twelve Months of the Issue Date	60%
Within Eighteen Months of the Issue Date	100%

(2) Definition of Gross Proceeds. For purposes of this subsection, “Gross Proceeds” means, with respect to each 18-Month Borrower, Sale Proceeds, Investment Proceeds, Transferred Proceeds and Replacement Proceeds, but does not include amounts (i) in a Bona Fide Debt Service Fund, (ii) in a Reasonably Required Reserve Fund, (iii) that, as of the Issue Date are not reasonably expected to be Gross Proceeds but that become Gross Proceeds after the end of the 18-month spending period, (iv) representing Sale or Investment Proceeds derived from payments under any Purpose Investment, and (v) representing repayments of grants.

(3) Reasonable Retainage. Notwithstanding the foregoing stated in paragraph 6.2(G)(1), 100% of the Gross Proceeds will be deemed spent before the end of the eighteen month period following the Issue Date although each 18-Month Borrower may retain an amount not exceeding 5% of Gross Proceeds after the end of the eighteen month period following the Issue Date for reasonable business purposes related to its Project if 100% of the Gross Proceeds, together with amounts earned on such proceeds from the Issue Date to the end of the thirty month period following the Issue Date, are in any event spent before the end of the thirty month period following the Issue Date.



(G) Exception for Proceeds Spent Within 6 Months. For purposes of this summary, any Borrower of amounts representing Bond proceeds eligible for the six-month expenditure rebate exception may from time to time be referred to as a “Six-Month Borrower.” If this exception is fulfilled with respect to any Six-Month Borrower then the arbitrage rebate requirement will be treated as satisfied with respect to Gross Proceeds of such Borrower’s Program Loan(s), other than with respect to allocable amounts in any Reasonably Required Reserve Fund.

(1) Timetable for Expenditure. Subject to the exception for de minimis amounts set forth in Subsection 6.2(I) below, if a Six-Month Borrower expends all of the Gross Proceeds of its Program Loan(s) within six months after the Issue Date, then the arbitrage rebate requirement set forth in Section 148(f) of the Code will be satisfied with respect to such moneys.

(2) Definition of Gross Proceeds. For purposes of this Subsection, “Gross Proceeds” means, with respect to each Six-Month Borrower, Sale Proceeds, Investment Proceeds, Transferred Proceeds and Replacement Proceeds, but does not include amounts (i) in a Bona Fide Debt Service Fund, (ii) in a Reasonably Required Reserve Fund, (iii) that, as of the Issue Date are not reasonably expected to be Gross Proceeds but that become Gross Proceeds after the end of the six-month spending period, (iv) representing Sale or Investment Proceeds derived from payments under any Purpose Investment, and (v) representing repayments of grants.

(H) De Minimis Exceptions. Any failure by a Borrower of amounts representing Bond proceeds to satisfy the final spending requirement of the 18-month expenditure rebate exception or the two-year construction expenditure rebate exception may be disregarded if that Borrower exercised due diligence to complete its Project within the 18-month or two-year period, as applicable, and if the amount of its failure to meet the final spending requirement is no greater than the lesser of 3% of the aggregate financial assistance provided with proceeds of the Bonds (in the form of Bond-Funded Loans) or its pro-rata portion of \$250,000. Any failure by a Borrower of amounts representing Bond proceeds to meet the six-month exception may be disregarded if the amount of its failure to meet the spending requirement is no greater than the lesser of 5% of its aggregate financial assistance provided with proceeds of the Bonds or its pro-rata portion of \$100,000.

(I) Available Rebate Exceptions. All Borrowers that receive financial assistance provided with proceeds of the Bonds (in the form of Bond-Funded Loans) expect to qualify for either (i) the exception for construction proceeds spent within two years, (ii) the exception for gross proceeds spent on capital costs within 18 months, or (iii) in the case of certain Costs of Issuance, the exception for gross proceeds spent within six months. Allocable amounts held in the Debt Service Reserve Account for any Borrower of amounts representing Bond proceeds that qualifies for an exception to the arbitrage rebate requirement based on expenditure of proceeds within six or eighteen months will, despite such qualification, be subject to the arbitrage rebate requirement with respect to such moneys beginning on the Issue Date.



Section 6.3. Recordkeeping. In connection with the arbitrage rebate requirement the Energy Commission will maintain the following records:

(A) The Energy Commission will retain records of the determinations made pursuant to Section 6.2 and amounts paid to the United States until six years after the retirement of the last obligation of the issue.

(B) The Energy Commission will record all amounts paid to the United States.

(C) The Energy Commission will contemporaneously furnish the Bond Trustee with statements of the Rebate Amount paid and to be paid to the United States.

Section 6.4. Fair Market Value. The Energy Commission will acquire all Nonpurpose Investments allocable to the Gross Proceeds of the Bonds at Fair Market Value. If the Energy Commission invests any Gross Proceeds in certificates of deposit or pursuant to an investment contract, the Energy Commission agrees to comply and to deliver certifications establishing the compliance of the certificate of deposit or investment contract with certain tax constraints set forth in Exhibit A under the definition of “Fair Market Value,” including certain special rules with respect to the investment of proceeds of the Bonds or amounts treated as proceeds of the bonds in investment contracts.

Section 6.5. Retention of Rebate Analyst. The Authority and the Energy Commission represent and covenant that prior to the first Computation Date a nationally-recognized firm will be engaged to perform the necessary and appropriate rebate and/or penalty calculations that may be required to be made from time to time with respect to the Bonds.

Section 6.6. No Investment Contract. As of the Issue Date, the Energy Commission has not invested any proceeds of the Bonds pursuant to an Investment Contract. In the event the Energy Commission acquires an Investment Contract, the Energy Commission and the provider thereof will make certain representations in compliance with Section 1.148-5(d) of the Regulations.

## ARTICLE VII.

### ALLOCATIONS INVOLVING NONPURPOSE INVESTMENTS

Section 7.1. Allocations Inside the Universal Cap. As a general rule Nonpurpose Investments, once allocated to the Bonds, will continue to be so allocated if their aggregate value does not exceed the Universal Cap.

(A) On each Valuation Date, the values of any Nonpurpose Investments allocated to the Bonds and of the Universal Cap must be newly determined for the purpose of calculating the amount of any Unused Universal Cap, except that a Nonpurpose Investment which is held in a bona fide debt service fund is not to be taken into account for this purpose. The value of a Nonpurpose Investment between Valuation Dates is its value on the most recent Valuation Date.



(B) Subject to Section 7.2 below and notwithstanding the general rule of this Section 7.1, Nonpurpose Investments allocated to Gross Proceeds of the Bonds will cease to be so allocated when such proceeds are properly allocated to an expenditure for a governmental purpose or when such proceeds become Transferred Proceeds of another issue of obligations.

(C) If on any Valuation Date (or other dates occurring at regular and more frequent intervals of time), the aggregate value of the Nonpurpose Investments allocated to the Bonds is less than the Universal Cap for the Bonds, then Nonpurpose Investments which are not properly allocated to another issue of obligations must be allocated to any Gross Proceeds of the Bonds up to the amount of the Unused Universal Cap.

Section 7.2. Allocations Outside the Universal Cap. If on any Valuation Date the aggregate value of the Nonpurpose Investments allocated to the Bonds exceeds the Universal Cap for the Bonds, then Nonpurpose Investments will cease to be allocated to the Bonds in the following order of priority:

- (A) Nonpurpose Investments of Replacement Proceeds of the Bonds; then
- (B) Nonpurpose Investments of Transferred Proceeds of the Bonds; and then
- (C) Nonpurpose Investments of Sale Proceeds and Investment Proceeds of the Bonds.

Section 7.3. Reallocations. If a Nonpurpose Investment ceases to be allocated to the Bonds pursuant to Section 7.2(B) above, such Investment is susceptible of reallocation under the Universal Cap (if any) calculated with respect to another issue of obligations. A Nonpurpose Investment that is so reallocated may be valued upon reallocation using the same valuation method that was applied with respect to the Universal Cap for the Bonds.

Section 7.4. Savings and Anti-Abuse Rules. An innocent failure to perform a computation required under this Article VII may be considered inconsequential if the general rule of Article VII is satisfied. An allocation of Nonpurpose Investments to the Bonds will not be given effect if the purpose of such allocation is to cause other Nonpurpose Investments not to be allocated to the Bonds in order to avoid compliance with this Article VII.

## ARTICLE VIII.

### FEDERAL GUARANTEE, POOLED FINANCINGS AND HEDGE BONDS

Section 8.1. No Impermissible Federal Guarantee. The Bonds are not impermissibly federally guaranteed under Code Section 149(b), taking into account various exceptions, including exceptions for the following: (i) any guarantee by the Federal Housing Administration, the Veterans' Administration, Fannie Mae, Freddie Mac, or Ginnie Mae; (ii) any guarantee related to investments of Gross Proceeds of the Bonds during an initial temporary period until needed for the governmental purpose of the Bonds, investments as part of a Bona Fide Debt Service Fund, investments of a Reasonably Required Reserve Fund, investments in bonds issued



by the United States Treasury, investments in refunding escrow funds or certain other investments permitted under the Regulations; or (iii) any guarantee (other than an investment in a federally insured deposit or account referenced in Section 149(b)(3)(C)(ii)), of private activity bonds for a qualified residential rental Project under Section 142(a)(7) of the Code, a housing program obligation under Section 11(b) of the United States Housing Act of 1937, or a qualified mortgage bond or a qualified veterans' mortgage bond under Section 143 of the Code.

Section 8.2. Pooled Financings. The Authority and the Energy Commission reasonably expect that (a) at least 95% of the Net Sale Proceeds of the Bonds will be used directly or indirectly to make or finance Bond-Funded Loans to Borrowers within three years of the Issue Date, and (b) at least 95% of the reasonably expected legal and underwriting costs associated with the Bonds will be paid not later than 180 days after the Issue Date. The Authority and the Energy Commission further represent that the payment of legal and underwriting costs associated with the Bonds is not contingent.

Section 8.3. No Hedge Bonds. Since (a) the Energy Commission reasonably expects, in accordance with Section 8.2 above, that at least 95% of the Net Sale Proceeds of the Bonds will be used to make or finance Bond-Funded Loans to Borrower within three years of the Issue Date, and (b) moneys loans will be treated as expended immediately upon their disbursement since Borrower will only request such disbursements on a "reimbursement" basis, as described in Section 2.4, the Bonds will satisfy the requirement, for purposes of ensuring that the Bonds do not constitute an issue of "hedge bonds" under Section 149(g) of the Code, that at least 85% of the Net Sale Proceeds of the Bonds will be expended for the governmental purposes of the bond issue within three years from the date of issuance of the Bonds. Further, not more than 50% of the Net Sale Proceeds of the Bonds will be invested in Nonpurpose Investments at a substantially guaranteed Yield of four years or more. Accordingly, the Bonds will satisfy the rules of Section 149(g) of the Code.

## ARTICLE IX.

### MISCELLANEOUS

Section 9.1. Purposes. The representations set forth herein are made for the purpose of establishing the reasonable expectations of the Authority and the Energy Commission as to the amount and use of the proceeds of the Bonds. They are intended and may be relied upon as a certification described in Section 148 of the Code and Section 1.148-2(b)(2) of the Regulations and delivered as part of the record of proceedings in connection with the issuance of the Bonds.

Section 9.2. Compliance with Code. The Authority and the Energy Commission each acknowledge that the covenants and conditions set forth in this Tax Agreement are based upon the Code and Regulations as they exist on the date hereof and that the Code or Regulations may be subsequently interpreted or modified by the federal government in a manner which is inconsistent with the covenants set forth herein. The Authority and the Energy Commission each agree that any such subsequent modification or interpretation of the Code or Regulations will be deemed a requirement that must be met pursuant to the general tax covenants set forth herein. The Authority and the Energy Commission shall not be required to comply with the requirements



of this Tax Agreement to the extent that, in the opinion of Bond Counsel, compliance with such requirements is not necessary to maintain the tax-exempt status of the Bonds.

Section 9.3. Tax Covenant. The Authority and the Energy Commission each covenant that it shall at all times do and perform all acts and things necessary and within its reasonable control in order to assure that interest paid on the Bonds shall, for purposes of federal income taxation, be not included in gross income. The Authority and the Energy Commission each covenant that it will not at any time or times permit any of the proceeds of the Bonds to be used directly or indirectly to acquire any Investment if the acquisition of the Investment would cause the Bonds to be classified as “arbitrage bonds” under Section 148 of the Code. The Authority and the Energy Commission each covenant that it will take no action or omit to take any action if to do so would cause the arbitrage rebate requirement imposed by Section 148(f) of the Code not to be met. The Authority and the Energy Commission each covenant that it will not permit or cause the proceeds of the Bonds within its control to be spent in any manner that would result in the classification of the Bonds as “private activity bonds” within the meaning of Section 141 of the Code.

Section 9.4. No Early Issuance. The date of issuance of the Bonds has been determined solely on the basis of bona fide financial reasons, in accordance with ordinary financial practice in financing facilities similar to the Project, and has not been determined with a view to prolonging the period between the issuance of the Bonds and expenditure of the proceeds thereof.

Section 9.5. Form 8038-G. The Authority shall cause an information reporting return on IRS Form 8038-G to be accurately completed and duly filed under Section 149(e) of the Code not later than the 15<sup>th</sup> day of the second calendar month after the close of the calendar quarter in which the Bonds are issued (*i.e.*, to be filed by August 15, 2003). A copy of Form 8038-G is attached in Exhibit C.

Section 9.6. Amendment of Tax Agreement. This Tax Agreement may be amended, changed, modified and/or supplemented only if the concurring written consent of the Authority and the Energy Commission and an written opinion of Sidley Austin Brown & Wood LLP or other Bond Counsel is obtained to the effect that such amendment, change, modification and/or supplement will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes.



IN WITNESS WHEREOF, the Authority and the Energy Commission have each caused this Tax Agreement to be executed in their respective names by a duly authorized officer, each as of this April 10, 2003.

CALIFORNIA CONSUMER POWER AND  
CONSERVATION FINANCING AUTHORITY

By: \_\_\_\_\_  
Chair

CALIFORNIA ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT  
COMMISSION

By: \_\_\_\_\_  
Executive Director



## EXHIBIT A

### DEFINITIONS

“2003A Bond Indenture” means the 2003A Bond Indenture, dated as of April 1, 2003, by and between the Authority and the State Treasurer, as Bond Trustee, as amended or supplemented from time to time.

“2003A Secured Loan Agreement” means the 2003A Secured Loan Agreement, dated as of April 1, 2003, by and between the Authority and the Energy Commission, as amended or supplemented from time to time.

“Accrued Interest” means the amount of pre-issuance interest accrued on the Bonds between their dated date, April 1, 2003, and the Issue Date.

“Authority” means the California Consumer Power and Conservation Financing Authority, an authority and public instrumentality of the State of California, or any board, agency, authority, political subdivision, governmental unit, department or officer succeeding to the principal functions thereof, as such functions pertain to this Bond financing, or to whom the powers conferred upon the Authority by the Authority Act shall be given by law.

“Available Construction Proceeds” means the amount equal to the Issue Price of the Construction Issue, increased by earnings on the Issue Price, earnings on amounts in a reasonably required reserve or replacement fund not funded from the proceeds of the Bonds, and earnings on all of the foregoing earnings, reduced by the amount of the Issue Price deposited in any reasonably required reserve or replacement fund and the issuance costs financed by the proceeds of the issue. Earnings, for purposes of this definition, include earnings on any tax-exempt bond. Pre-issuance accrued interest and the earnings thereon may be disregarded. Earnings on any reasonably required reserve or replacement fund whether or not funded with the proceeds of the Bonds will be included in the determination of Available Construction Proceeds only to the extent that those earnings accrue before the earlier of the date construction is substantially complete or the date that is two (2) years after the issue date of the Bonds. Earnings on any reasonably required reserve or replacement fund may be excluded from the determination of Available Construction Proceeds if the Authority so elects. Such excluded earnings will be subject to the arbitrage rebate requirement from the date of issuance of the Bonds. Substantial completion for purposes of this requirement means the earlier of the date when the Authority or Borrower abandons the Capital Project or the date when at least ninety percent (90%) of the total costs of construction of the Capital Project are reasonably expected, as of that date, to be financed with the Available Construction Proceeds that have been allocated to such expenditure.

“Bona Fide Debt Service Fund” means a fund or funds, which may include proceeds of an issue, that is used primarily to achieve a proper matching of revenues with principal and interest payments within each Bond Year and is depleted at least once each Bond Year except for a reasonable carryover amount (not in excess of the greater of the earnings on the fund for the immediately preceding Bond Year or one-twelfth of the principal and interest payments on the issue for the immediately preceding Bond Year).



“Bond Counsel” means Sidley Austin Brown & Wood LLP or any nationally recognized firm of attorneys expert in the issuance of state and local government bonds the interest on which is excluded from federal gross income under Section 103 of the Code and retained by the Authority and the Energy Commission and satisfactory to the Bond Trustee and the Master Trustee.

“Bond Trustee” means the Treasurer of the State of California, in its capacity as bond trustee under the 2003 Bond Indenture and its successors in that capacity.

“Bond Year” means each one-year period (or shorter period) from the date of issue of the Bonds that ends at the close of business on the day in the calendar year selected by the Authority which day is the last day within one year of the Issue Date of the Bonds. If no such day is selected prior to the earlier of the final maturity date of the Bonds or the date that is 5 years after the issue date thereof, each Bond Year ends at the close of business on the date preceding the anniversary date of the date of issue.

“Bond-Funded Loan” means a Program Loan that is funded, in whole or in part, with proceeds of the Bonds, as described in Section 1.3.

“Bonds” means, collectively, the \$28,005,000 California Consumer Power and Conservation Financing Authority Energy Efficiency Master Trust Revenue Bonds, Series 2003A, dated as of April 1, 2003.

“Borrower” means any eligible school, hospital, public care institution, unit of local government or other eligible entity which is a Governmental Unit and has signed a Program Loan Agreement with the Energy Commission to finance a Borrower Project under the Program and whose participation in the Program does not adversely affect the exclusion from federal income tax of interest on the Bonds. Unless the context requires otherwise in this Tax Agreement, the term Borrower will ordinarily refer to Borrowers with respect to Bond-Funded Loans.

“Borrower Tax Certificate” means the Borrower Tax Certificate executed or to be executed by each Borrower regarding the use of proceeds of the Bonds, in connection with the Borrower’s Program Loan Agreement.

“Capital Project” means all Capital Expenditures, plus related working capital expenditures to which the de minimis rule under Regulations Section 1.148-6(d)(3)(ii)(A) applies, that carry out the governmental purposes of an issue.

“Capital Expenditure” shall mean any cost of a type that is properly chargeable to capital account (or would be so chargeable with a proper election) under general federal income tax principles. For example, costs incurred to acquire, construct, or improve land, buildings, and equipment generally are Capital Expenditures. Whether an expenditure is a Capital Expenditure is determined at the time the expenditure is paid with respect to the property; future changes in law do not affect whether an expenditure is a Capital Expenditure.

“Code” means the Internal Revenue Code of 1986, as amended, as in effect on the Issue Date.



“Commingled Fund” shall mean any fund or account containing both Gross Proceeds of an issue and amounts in excess of \$25,000 that are not Gross Proceeds of that issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account. An open-ended regulated investment company under Section 851 of the Code, however, shall not be deemed to be a Commingled Fund.

“Computation Date” means the date on which a determination of the Rebate Amount is made pursuant to Section 6.2(C) of the Tax Agreement and is either an Installment Computation Date, the Final Computation Date or any other Computation Date selected by the Energy Commission.

“Computation Date Credit” means an amount equal to \$1,000 on the last day of each Bond Year during which there are any amounts of Gross Proceeds allocated to the Bonds and on the final maturity date of the Bonds.

“Computation Period” means the period beginning on the Issue Date and ending on the next succeeding Computation Date and each period beginning on such Computation Date and ending on the next Computation Date thereafter.

“Construction Issue” means, for purposes of the Two Year Construction Expenditure Rebate Exception, any issue (or portion thereof) that is not a refunding issue in which all of the Bonds are either (i) Governmental Bonds, (ii) Qualified 501(c)(3) Bonds, or (iii) Qualified Private Activity Bonds that finance property owned by a Governmental Person or a Tax-Exempt Organization, if at least 75 percent of the Net Sale Proceeds of the bond issue are to be used, or are expected to be used if such an election has been made, for expenditures for construction, reconstruction and rehabilitation of property which is owned by a Governmental Person or a Tax-Exempt Organization. A leased or managed facility will be considered owned by a Governmental Person or a Tax-Exempt Organization if:

- (i) the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation deductions or an investment credit with respect to such property;
- (ii) the lease term is not more than eighty percent (80%) of the reasonably expected economic life of the property within the meaning of Section 147(b) of the Code; and
- (iii) the lessee has no option to purchase the property other than at Fair Market Value (as of the time the option is exercised).

“Controlled Group” means, in reference to Governmental Persons or Tax-Exempt Organizations, a group of entities controlled directly or indirectly by the same entity or group of entities, based on application of the more particular control principles set forth in Regulations Section 1.150-1(e). For this purpose, the determination of direct control is based on all the facts and circumstances. In general, one entity controls another entity if the first entity possesses either of the following rights or powers on a discretionary, non-ministerial basis: (i) the right or power to approve and to remove without cause a controlling portion of the governing body of the controlled entity; or (ii) the right or power to require the use of funds of the controlled entity for



any purpose of the controlling entity. In addition, for this purpose, a special rule under Regulation Section 1.150-1(e)(3) treats a general purpose governmental entity with its own substantial taxing, eminent domain, and police powers as an uncontrolled entity (*e.g.*, a city possessing substantial amounts of each of the referenced sovereign powers is not a controlled entity of a state).

“Costs of Issuance” means costs incurred in connection with the sale, issuance and delivery of the Bonds. Depending on the context, Costs of Issuance may or may not include the Underwriter’s Discount.

“De Minimis Discount or Premium” means (a) with respect to the original issue discount of a Bond an amount that does not exceed two percent multiplied by the stated redemption price at maturity of the Bond, and (b) with respect to the original issue premium of a Bond an amount that does not exceed the sum of (i) two percent multiplied by the stated redemption price at maturity of the Bond, plus (ii) an amount that is attributable exclusively to reasonable underwriter’s compensation.

“Eligible Project” or “Eligible Project” means any energy conservation measures which are eligible for funding under the Energy Conservation Assistance Act.

“Energy Commission” means the California Energy Resources Conservation and Development Commission, a commission of the State of California, or any board, agency, authority, political subdivision, governmental unit, department or officer succeeding to the principal functions thereof, as such functions pertain to this Bond financing, or to whom the powers conferred upon the Energy Commission by the Energy Conservation Assistance Act shall be given by law.

“Energy Conservation Assistance Act” means the Energy Conservation Assistance Act of 1979, California Public Resource Code Division 15, Chapter 5.2 (Sections 25410-25421), as amended from time to time.

“Existing Loan” means a Program Loan funded exclusively with amounts other than proceeds derived from the sale of the Bonds or investment earnings thereon, as described in Section 1.3

“Fair Market Value” of an Investment has the following meanings:

(a) *In General.* Except as elsewhere specifically stated below, the Fair Market Value of an Investment is the price at which a willing buyer would purchase the Investment from a willing seller in a bona fide, arm’s-length transaction.

(b) *United States Treasury Obligation.* The Fair Market Value of a United States Treasury Obligation that is purchased directly from the United States Treasury is its purchase price.

(c) *Certificate of Deposit.* The Fair Market Value of a certificate of deposit with a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal is its purchase price provided, the Yield on the certificate of deposit is not



less than (i) the Yield on reasonably comparable direct obligations of the United States and (ii) the highest yield published by the provider and currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(d) *Guaranteed Investment Contracts and Yield Restricted Escrows.* The Fair Market Value of a guaranteed investment contract or an investment purchased for a yield restricted defeasance escrow is its purchase price, provided the Authority makes a bona fide solicitation for such contract that satisfies all of the following requirements:

(i) The bid specifications are in writing and are timely forwarded to potential providers.

(ii) The bid specifications include all material terms of the bid; material terms are defined as terms that may directly or indirectly affect the yield or cost of the investment.

(iii) The bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Authority or any other person (whether or not in connection with the bond issue), and that the bid is not being submitted solely as a courtesy to the Authority or any other person for purposes of satisfying the requirements of the applicable provisions of the Regulations.

(iv) The terms of the bid specifications are commercially reasonable, *i.e.*, there is a legitimate business purpose for the term other than to increase the purchase price or reduce the yield of the investment (for example, for solicitations of investments for a yield restricted defeasance escrow, the hold firm period must be no longer than the Authority reasonably requires).

(v) With respect to purchases of guaranteed investment contracts only, the terms of the solicitation take into account the Authority's reasonably expected deposit and drawdown schedule for the amounts to be invested.

(vi) All potential providers have an equal opportunity to bid, for example, no potential provider is given the opportunity to review other bids (*i.e.* a "last look") before providing a bid.

(vii) At least three reasonably competitive providers are solicited for bids; reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the investments being purchased.

The bids received must meet all of the following requirements:

(i) The Authority receives at least three bids from providers that the Authority solicited under a bona fide solicitation, which bids meet the requirements set forth immediately above and that do not have a material financial



interest in the issue. A lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until fifteen days after the issue date of the issue. In addition, any entity acting as financial advisor with respect to the purchase of the investment at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue. A provider that is a related party to a person that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(ii) At least one of the three bids received is from a reasonably competitive provider of such types of investments, as described in paragraph (vii) above.

(iii) If the Authority uses an agent to conduct the bidding process, the agent did not bid to provide the investment.

The winning bid is:

(i) In the context of a guaranteed investment contract, the highest yielding bona fide bid (determined net of any broker's fees).

(ii) In the context of investments other than guaranteed investment contracts, the lowest cost bona fide bid (including any broker's fees). The lowest cost bid is either the lowest cost bid for the portfolio or if the Authority compares the bids on an investment-by-investment basis, the aggregate cost of a portfolio comprised of the lowest cost for each investment. Any payment received by the Authority from a provider at the time the investment is purchased (*e.g.*, an escrow float contract) for a yield restricted defeasance escrow under a bidding procedure meeting the requirements of this definition is taken into account in determining the lowest cost bid. In general, the lowest cost bona fide bid (including any broker's fee) may not be greater than the cost of the most efficient portfolio comprised exclusively of United States Treasury Securities — State and Local Government Series ("SLGS") available for purchase from the Bureau of Public Debt. The cost of the most efficient portfolio of SLGS is to be determined at the time that bids are required to be submitted pursuant to the terms of the bid specifications. This requirement to compare to the most efficient SLGS portfolio does not apply if SLGS are not available for purchase on the date that bids are required to be submitted because sales of those securities have been suspended.

The provider of the investments or the obligor on the guaranteed investment contract certifies the administrative costs that it pays (or expects to pay), if any, to third parties in connection with supplying the investment.

The Authority must retain the following records with the bond documents until three years after the last outstanding bond is redeemed:

(i) For guaranteed investment contracts, a copy of the contract, and for other types of purchases, the purchase agreement or confirmation.



(ii) The receipt or other record of the amount actually paid by the Authority for the investment, including a record of any administrative costs paid by the Authority to third parties and the certification of such costs.

(iii) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid and the bid results.

(iv) The bid solicitation form and, if the terms of the purchase agreement or the guaranteed investment contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation. If the Authority replaces an investment in the winning bid portfolio with another investment, the purchase price of the investment must be bid under a bidding procedure meeting the requirements of this definition.

(v) For purchases of investments other than guaranteed investment contracts, the most efficient portfolio of SLGS, determined at the time that the bids were required to be submitted pursuant to the terms of the bid specifications.

For investments purchased for a yield restricted defeasance escrow, a fee paid to a bidding agent is a qualified administrative cost (and therefor excludable from the computation of yield on the investment(s)) only if the following requirements are satisfied:

(i) The fee is comparable to a fee that would be charged for a reasonably comparable investment if acquired with a source of funds other than the gross proceeds of tax-exempt bonds and such fee is reasonable. A fee will be deemed comparable and reasonable if it does not exceed the lesser of \$10,000 or one-tenth of one percent (0.1 percent) of the initial principal amount of the investments deposited in the yield restricted defeasance escrow.

(ii) For transactions in which a guaranteed investment contract and other investments are purchased for a yield restricted defeasance escrow in a single investment (*e.g.*, an issuer bids United States Treasury obligations and an escrow float contract collectively), the broker's fee described in the immediately preceding paragraph will apply to the initial principal amount of the investment deposited in the yield restricted defeasance escrow and a broker's fee will not be considered a qualified administrative cost with respect to the guaranteed investment contract portion of the investment, to the extent that the present value of the fee, as of the date the contract is allocated to the issue, exceeds the lesser of a reasonable amount or the present value of annual payments equal to five one-hundredths of one percent (0.05 percent) of the weighted average amount reasonably expected to be invested each year of the term of the contract. Present value is computed for this purpose by using the taxable discount rate used by the parties to compute the commission or, if not readily ascertainable, a reasonable taxable discount rate.



“Final Computation Date” means the day on which the last bond that is part of the Bonds is discharged.

“Fixed Rate Investment” means any Investment the Yield on which is fixed and determinable on its issue date.

“Fixed Yield Bond” means any bond whose Yield is fixed and determinable on its Issue Date using the assumptions and rules set forth in Section 1.148-4(b) of the Regulations.

“Fixed Yield Issue” means any issue at any time that each bond included in it and still outstanding is a Fixed Yield Bond.

“Future Value” means, with respect to any payment or receipt paid or received on any date (or treated as paid or received), the value of the payment or receipt on that date increased by interest assumed to be earned and compounded at the end of each compounding interval over any specified future period using a compounding rate equal to the Yield on the Bonds and the compounding interval and financial conventions used to compute Yield on the Bonds.

“Governmental Bonds” means any Tax-Exempt Obligations which are not Qualified Private Activity Bonds.

“Governmental Person” means a state or local governmental unit as defined in Section 1.103-1 of the Regulations or any instrumentality thereof, excluding the United States or any agency or instrumentality thereof.

“Gross Proceeds” means with respect to the Bonds, Sale Proceeds, Investment Proceeds, Transferred Proceeds and Replacement Proceeds.

“Installment Computation Date” means the last day of the fifth Bond Year and each succeeding fifth Bond Year.

“Investment” means (i) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code), (ii) any obligation (other than a Tax-Exempt Obligation, the interest on which is also not a preference item for purposes of calculating the alternative minimum tax imposed by Section 55 of the Code), interests in certain regulated investment companies, and demand deposit SLGS, (iii) any annuity contract (within the meaning of Section 72 of the Code), (iv) any residential real property for family units not located within the jurisdiction of the State and which is not required to implement a court-ordered or approved housing desegregation plan, or (v) any investment-type property (including a contract that would be a hedge (within the meaning of Section 1.148-4(h) of the Regulations except that it contains a significant investment element) that is held as a passive vehicle for the production of income, including any prepayment for property or services if a principal purpose of prepayment is to receive an investment return from the time the prepayment is made until the time payment would otherwise have been made.

“Investment Contract” shall mean a Nonpurpose Investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, and also includes any agreement to supply investments on two or more future dates (e.g., a forward supply contract).



“Investment Proceeds” means amounts actually or constructively received from the investment of Sale Proceeds or which are derived from the reinvestment of any such amounts.

“Issue Date” means, generally, for an issue, the first date on which the Authority receives the purchase price in exchange for delivery of its evidence of indebtedness. In the case of the Bonds, the Issue Date is April 10, 2003.

“Issue Price” when used in connection with an issue of publicly offered obligations is the first price at which at least 10% of the obligations are sold to the public. Bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers are not included in the definition of “public” for purposes of the preceding sentence. If the obligations are privately placed, the Issue Price is the price paid for them by the first buyer. The Issue Price of obligations that are publicly offered in a bona fide public offering is determined on the basis of actual facts and reasonable circumstances existing on the sale date unadjusted for subsequent occurrences. The Issue Price of the Bonds may not exceed their Fair Market Value as of their sale date.

“Master Trust Agreement” means the Master Trust Agreement, dated as of April 1, 2003 by and among the Authority, the Energy Commission and the Treasurer of the State of California, as Master Trustee, and which provides additional security for any issue or series of Bonds pursuant to a Series Certificate executed by an Authority Representative.

“Master Trustee” mean the Treasurer of the State of California, in its capacity as master trustee under the Master Indenture and its successors in that capacity.

“Net Sale Proceeds” means Sale Proceeds less the portion of those Sale Proceeds invested in a reasonably required reserve or replacement fund or as part of a minor portion.

“Nonpurpose Investment” means any Investment that is not acquired in furtherance of the governmental purpose of an issue.

“Nonpurpose Payments” means the payments made with respect to a Nonpurpose Investment that are listed in Section 6.2(C)(1) of the Tax Agreement.

“Nonpurpose Receipts” means the receipts received with respect to a Nonpurpose Investment that are listed in Section 6.2(C)(2) of the Tax Agreement.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Plain Par Bond” means any bond that (i) is issued with original issue discount equal to not more than 2% of its stated redemption price at maturity (which includes call premium), (ii) is issued for a price that does not include accrued interest other than interest that accrues up to one year prior to issuance and is paid within one year afterwards, (iii) bears interest from the issue date at a single stated fixed rate or is a variable rate obligation that pays interest at least annually, and (iv) has a lowest stated redemption price not less than its outstanding stated principal amount.



“Plain Par Investment” means any Investment that is an obligation that (i) is issued with original issue discount or, if acquired on a date other than its issue date, is acquired with market premium or discount that, in either case, is equal to not more than 2% of the stated redemption price of the Investment at maturity (which includes call premium), (ii) is issued for a price that does not include accrued interest other than interest that accrues up to one year prior to issuance and is paid within one year afterwards, (iii) bears interest from the issue date at a single stated fixed rate or is a variable rate obligation that pays interest at least annually, and (iv) has a lowest stated redemption price not less than its outstanding stated principal amount.

“Present Value” means the amount determined by using the following formula:

$$PV = \frac{FV}{(1+i)^n}$$

where “i” equals the discount rate used to compute Present Value divided by the number of Compounding Intervals in a year and “n” equals the sum of (i) the number of whole Compounding Intervals for the period ending on the Computation Date and (ii) a fraction the numerator of which is the length of any short Compounding Interval during such period and the denominator of which is the length of a whole Compounding Interval.

“Private Use” means any activity that constitutes a trade or business that is carried on by Persons other than Governmental Persons. The leasing of property financed or refinanced with proceeds of the Bonds or the access by or use of a Person other than a Governmental Persons to property or services on a basis other than as a member of the general public shall constitute a Private Use.

“Proceeds” means all or any portion of the amounts received by the Authority from the issuance of the Bonds. Proceeds also includes, unless the context requires otherwise, all or any portion of any amount earned as a result of the investment of proceeds of the Bonds.

“Proceeds Net of Costs” means, unless the context requires otherwise, the Sale Proceeds of the Bonds, minus, to the extent paid from or netted out of the Sale Proceeds, (a) the Underwriter’s Discount, (b) other Costs of Issuance, and (c) amounts, if any deposited into a reasonably required reserve or replacement fund.

“Program” means the energy efficiency loan program established and administered by the Energy Commission to make funds available to eligible Borrowers for energy conservation Project pursuant to the Energy Conservation Assistance Act.

“Program Loan” or “Program Loans” means any loan or loans made by the Energy Commission to Borrowers under the Program in accordance with individual Program Loan Agreements with each Borrower, including both existing loans and future loans.

“Program Loan Agreement” means any agreement evidencing a Program Loan or Program Loans, or providing security therefor, made by the Energy Commission to any Borrower under the Program, including without limitation, the 2003A Program Loan Agreements described in the 2003A Secured Loan Agreement, together with all extensions, renewals, modifications or replacements thereof.



“Project” means, in the case of any Borrower, the Eligible Project (or portion thereof) described in a Program Loan Agreement executed by that Borrower, to the extent it is being financed or refinanced with proceeds of the Bonds.

“Purpose Investment” means any Investment acquired in furtherance of the governmental purpose of a bond issue. The Purpose Investments with respect to the Bonds are the Program Loan Agreements.

“Qualified Guarantee” means, with respect to the Bonds, an unconditional transfer, in any form, of substantially all of the credit risk for all or part of the payments, such as payments for principal and interest, redemption prices or tender prices, on the guaranteed Bonds. The guarantor must not expect to make any payments other than those pursuant to a direct-pay letter of credit or similar arrangement for which the guarantor will be immediately reimbursed. Reasonable procedural or administrative requirements or, in the case of a guarantee against failure to remarket a Qualified Tender Bond, commercially reasonable limitations based on credit risk, will not cause the guarantee to be conditional. The guarantor may not be a co-obligor, nor may the obligor and any related parties combined use more than 10% of proceeds of the guaranteed portion of the Bonds. The guarantee fee must not exceed a reasonable arm’s-length charge solely for the transfer of the credit risk. A guarantee will not be qualified unless, as of the date the guarantee is obtained, the Authority reasonably expects that the present value of all fees for the guarantee will be less than the present value of the expected interest savings on the issue as a result of the guarantee. For this purpose, present value is computed using the yield on the issue, determined with regard to the guarantee fees, as the discount rate.

“Qualified Hedge” means, with respect to the Bonds, a contract between the Energy Commission or the Authority and any unrelated party which is entered into primarily to reduce the Energy Commission’s or the Authority’s risk of interest rate changes with respect to the Bonds. The contract may be an interest rate swap, an interest rate cap, a futures contract, a forward contract, an option or may take another form. A contract will not be a Qualified Hedge if it contains any significant investment element (*i.e.* an expected return). For example, variable rate bonds held by the Authority do not constitute a qualified hedge. A contract may contain a significant investment element if payments under the contract do not correspond closely in time and amount to the specific interest payment being hedged on the bonds. For example, an interest rate swap generally contains a significant investment element if it requires any payments, other than periodic payments, before its termination date (*i.e.* an up-front payment for an off-market swap). Similarly an interest rate cap contains a significant investment element if the cap rate is less than the on-market swap rate on the date the cap is entered into. For this purpose, the on-market swap rate is the single fixed rate for which the rate or index that is the subject of the cap could be swapped in an on-market interest rate swap that requires only periodic payments and that has a term equal to the term of the cap. A hedge will not be qualified unless it covers, in whole or part, all interest payments on all of the substantially identical bonds of an issue (*i.e.*, all bonds having the same interest rate, maturity and terms). If the hedge does not cover all interest payments on all the substantially identical bonds being hedged, it must cover in whole or part, the same specific identifiable interest payments on each of the substantially identical bonds (*i.e.* a pro-rata portion of each interest payment on the variable rate bonds of an issue for the first five years). Change to the value of the contract must be based primarily on interest rate changes. The hedged amount may not exceed the Authority’s risk with respect to interest rate changes on



the hedged bonds. Payments under the contract must correspond closely, in both time and amount, to the specific interest payments being hedged on the hedged bonds. Payments must not begin to accrue under the contract before the sale date of hedged bonds, and must not accrue longer than the hedged interest payments on the bonds. Payments to the hedge provider must be reasonably expected to be made from the same funds that, absent the hedge, would be reasonably expected to be used to pay principal of and interest on the hedged bonds. The hedge must also be identified by the issuer of the bonds on its books and records maintained for the hedged bonds not later than three days after the date on which the contract is entered into. The identification must specify the hedge provider, the terms of the contract, and the hedged bonds. The identification must contain sufficient detail to establish that the requirements of Regulation Section 1.148-4(h)(2) and, if applicable, Regulation Section 1.148-4(h)(4) are satisfied. The hedge must also be noted on all forms filed with the Internal Revenue Service for the issue on or after the hedge is entered into.

“Qualified 501(c)(3) Bonds” means bonds which meet the definition contained in Section 145 of the Code.

“Qualified Private Activity Bond” shall mean any obligation the interest on which is not included in gross income for federal income tax purposes under Sections 103(a) of the Code and which is an exempt facility bond, a student loan bond, a qualified mortgage bond, a qualified veterans’ mortgage bond, a qualified small issue bond, a qualified redevelopment bond, or a Qualified 501(c)(3) Bond (as such terms are defined in Sections 141 through 150 of the Code).

“Reasonably Required Reserve Fund” shall have the meaning used in Regulations Section 1.148-2(f)(2) and generally shall mean the portion of a reserve or replacement fund that is eligible to be invested without yield restriction. The amounts invested without yield restriction as part of such a Reasonably Required Reserve Fund for bonds are subject to a size limitation equal to the least of the following: (i) 10 percent of the stated principal amount (or, for any bond issue have more than a de minimis amount of original issue discount or premium, the Issue Price of those bonds); (ii) the maximum annual principal and interest on the bonds; or (iii) 125% of average annual debt service on the bonds.

“Rebate Amount” means, with respect to the Bonds, the amount computed as described in Section 6.2(C) of the Tax Agreement.

“Rebate Requirement” means the arbitrage rebate requirement imposed by Section 148(f) of the Code, as described in Article VI hereof.

“Replacement Proceeds” means amounts with a nexus to the Bonds sufficiently direct to lead to the conclusion that they would have been used for the governmental purposes for which the Bonds are being issued if the proceeds of the Bonds were not so used. Amounts held by the Energy Commission, any party related to it or the Authority will be treated as Replacement Proceeds if those amounts bear the nexus to the Bonds described in the preceding sentence. Replacement Proceeds include but are not limited to:



(1) sinking funds (debt service funds, redemption funds, reserve funds, replacement funds, or any other fund, to the extent reasonably expected to be used directly or indirectly to pay principal or interest on the Bonds);

(2) pledged funds (any amounts directly or indirectly pledged to pay principal or interest on the Bonds, cast in any form but providing reasonable assurance that they will be available to pay principal or interest on the Bonds, even if the Energy Commission encounters financial difficulty);

(3) negative pledges (amounts held under an agreement to maintain such amounts at a particular level for the direct or indirect benefit of holders or a guarantor of the Bonds, excluding (i) amounts as to which the Energy Commission may have granted to third parties rights superior to the rights of the bondholders or any guarantor of the Bonds and (ii) amounts limited to the reasonable needs for which they are maintained, the required level of which is tested no more frequently than every 6 months and which may be spent without any substantial restriction other than a requirement of replenishment by the next testing date);

(4) other replacement proceeds ((i) amounts arising during any period that the Bonds remain outstanding longer than necessary to achieve the governmental purpose of the Bonds determined based on the Energy Commission's expectations as of the Issue Date and (ii) amounts arising to the extent proceeds of the Bonds are used to finance any working capital reserve).

“Sale Proceeds” means amounts actually or constructively received on the sale and issuance of the Bonds, exclusive of any such amounts that are received as, and which, before the first anniversary of the Issue Date, are used to pay, accrued interest on the Bonds, including amounts such as Accrued Interest.

“Secured Loan” means that loan made by the Authority to the Energy Commission pursuant to the 2003A Secured Loan Agreement.

“SLG” or “SLGS” means a time deposit security issued by the Treasury pursuant to the Time Deposit State and Local Government Series Program described in 31 C.F.R. part 344.

“State” means the State of California.

“Tax-Exempt Obligation” shall mean any obligation issued by any issuer the interest on which is not included in gross income for purposes of federal income taxation under Section 103 of the Code.

“Tax-Exempt Organization” shall mean an entity organized under the laws of the United States of America or any state thereof which is an organization described in Section 501(c)(3) of the Code and exempt from federal income taxes under Section 501(a) of the Code, or corresponding provisions of federal income tax laws from time to time in effect.

“Transfer Date” means any date that Program Loan Repayments are applied to the redemption of refunded obligations with the result that unspent proceeds of the refunded issue



(or any portion thereof) thereupon become allocated to the refunding issue as Transferred Proceeds.

“Transferred Proceeds” means unspent proceeds of a refunded issue that become proceeds of a refunding issue and therefore cease to be treated as proceeds of the refunded issue.

“Treasury Regulations” means the Income Tax Regulations promulgated under Sections 103 and 141 through 150 of the Code by the Department of the Treasury, as amended.

“Treasury” means the United States Department of the Treasury.

“Underwriter” means Goldman, Sachs & Co., as set forth in Section 1.4.

“Underwriter’s Discount” means the amount retained by or paid to the Underwriter as compensation to the Underwriter for underwriting the Bonds.

“Universal Cap” means the maximum Value of Nonpurpose Investments that may be allocated to the Bonds, an amount which may not exceed the aggregate Value of the outstanding Bonds at any time of determination.

“Unused Universal Cap” means, as of any date of calculation, the excess (if any) of the Value ascribed to the Universal Cap for the Bonds over the aggregate Value of the Investments allocated to the Bonds.

“Valuation Date” means the date on which the Universal Cap and the Value of the Nonpurpose Investments allocable to the Bonds thereunder are determined. With respect to new money issues, the first Valuation Date shall be the second year anniversary date of the date of issuance of the Bonds; thereafter, the first day of each Bond Year shall constitute a Valuation Date. With respect to a refunding issue, each date on which proceeds of the refunded issue would become transferred proceeds of the refunding issue, *e.g.*, each date on which principal of the refunded issue is paid with proceeds of the refunding bonds, shall constitute a Valuation Date. In addition, the first date of each Bond Year shall also be a Valuation Date.

“Value” means, in the case of a Bond, the Value of a Bond and, in the case of an Investment, the Value of an Investment.

“Value of a Bond” means, in the case of a Plain Par Bond, its outstanding stated principal amount, plus accrued unpaid interest or in the case of a Plain Par Bond actually redeemed, or treated as redeemed, its stated redemption price on the redemption date plus accrued unpaid interest. In the case of a bond other than a Plain Par Bond, the Value of the bond on any date is its Present Value on that date, using the Yield on the issue of which it is a part as the discount factor. In determining the Present Value of a variable rate bond, the initial interest rate on the bond established by the index or other rate setting mechanism is used to determine the interest payments on that bond.

“Value of an Investment” on any date means, as permitted or required, the Present Value or the Fair Market Value of the Investment or its outstanding principal amount. Paragraphs (A)



through (F) below specify the valuation methods required or permitted to be used for the Investments listed:

(A) *Fixed Rate Investments.* A Fixed Rate Investment may be valued at its Present Value or at its Fair Market Value on any date unless it is required to be invested at a restricted yield.

(B) *Plain Par Investments.* A Plain Par Investment may be valued at its outstanding stated principal amount on any date (plus interest accrued but unpaid on that date) unless it is required to be invested at a restricted yield.

(C) *Any Investment.* Any Investment may be valued at its Fair Market Value on any date unless it is required to be invested at a restricted yield.

(D) *Yield Restricted Investments.* An Investment required to be invested at a restricted yield (for example, an Investment held after the expiration of the applicable investment temporary period) must be valued at its Present Value as of any date unless the Investment is required to be valued at Fair Market Value as provided in paragraph (E) below.

(E) *Mandatory Valuation at Fair Market Value.* Subject to paragraph (D) above, Investments deemed to be acquired or disposed of with respect to the Bonds (as a result, for example, of sinking fund deposits or withdrawals) must be valued on the deemed acquisition or disposition date at Fair Market Value unless (i) the Investment was allocated to the Bonds as Transferred Proceeds or as a result of the application of the Universal Cap rule or (ii) the Investment is held in a commingled fund (other than a bona fide debt service fund or a commingled fund that operates exclusively as a reserve fund, sinking fund or replacement fund for two or more issues of the Energy Commission).

(F) *Special Rule for Transferred Proceeds.* Notwithstanding any matter stated above, the Value of any Nonpurpose Investment allocable to Transferred Proceeds may not exceed the Value of that Investment used for purposes of applying the arbitrage restrictions with respect to the issue of refunded obligations as of any Transfer Date.

“Yield” means, the Yield computed on the Bonds under Section 1.148-4 of the Regulations and on a Investment under Section 1.148-5 of the Regulations in either case by compounding interest at the end of each compounding interval as further described in paragraphs (A) and (B) below:

(A) When used with respect to the Bonds, Yield means, as of any Computation Date, that discount rate which when used in computing the Present Value of all unconditionally payable payments of principal, interest, fees for Qualified Guarantees on the Bonds (including those for Qualified Hedges) produces an amount equal to the sum of the issue prices of the obligations that comprise the Bonds. The Yield is computed as of the Issue Date by treating a bond subject to mandatory or contingent early redemption or to certain optional redemption provisions as redeemed on its expected early redemption date for an amount equal to its Value on such date. If a Fixed Yield Bond (i) is subject to optional redemptions within 5 years of the Issue Date and the Yield not taking into



account the optional redemption is more than  $\frac{1}{8}$  of 1% above the Yield assuming the early redemption, (ii) is issued at an issue price that exceeds the stated redemption price at maturity by more than  $\frac{1}{4}$  of 1% multiplied by the product of the stated redemption price to maturity and the number of complete years to the first optional redemption date for the bond, or (iii) bears interest at increasing interest rates, the Yield on the Bonds containing such Fixed Yield Bond is computed by treating such Fixed Yield Bond as redeemed at its stated redemption price on the optional redemption date that produces the lowest Yield on the Bonds. No adjustment will be made on any Computation Date to the Yield on the Bonds as computed on the Issue Date unless redemption rights are subsequently transferred to a third party or termination payments are received with respect to Qualified Hedges.

(B) When used with respect to any Investment allocated to the Bonds, Yield means the Yield on the Investment computed using the same compounding interval and financial conventions used to calculate the Yield on the Bonds. The Yield on an Investment allocated to the Bonds is the discount rate that, when used on the date the Investment is first purchased with Gross Proceeds or allocated to Gross Proceeds of the Bonds to compute the Present Value on that date of all unconditionally payable Nonpurpose Receipts from the Investment, produces an amount equal to the Present Value on that date of all unconditionally payable Nonpurpose Payments for the Investment.

“Yield Reduction Payments” means payments made to the United States with respect to any Nonpurpose Investment that (i) are paid at the same time and in the same manner as Rebate Amounts are required to be paid and (ii) are paid with respect to Nonpurpose Investments that, in the case of the Bonds, are allocated to Gross Proceeds that once qualified for the temporary period for capital Project (which has since expired) or that are held in the Program Loan Account or the Debt Service Reserve Account, as set forth in Regulations Section 1.148-5(c). The Treasury Regulations set forth seven situations in which amounts paid to the United States (including payments of rebatable arbitrage) are treated as payments for a nonpurpose investment that reduces the yield on that investment:

(A) nonpurpose investments during one of the temporary periods available for capital projects, restricted working capital expenditures, pooled financings, or investment proceeds;

(B) nonpurpose investments for variable yield bond issues for any computation period during which at least 5% of the value of the issue is represented by variable yield bonds;

(C) nonpurpose investments allocable to transferred proceeds of a current refunding issue to the extent necessary to reduce the yield on such investments to the yield required by Section 148(a) of the Code;

(D) nonpurpose investments allocable to transferred proceeds of an advance refunding issue to the extent the investment of the refunding escrow allocable to other



proceeds of the issue cannot, with zero-yielding investments, meet the yield required by Section 148(a) of the Code;

(E) nonpurpose investments allocable to a reserve or replacement fund or a fund that is in excess of the sizing limits for a reasonably required reserve fund, but only to the extent that such amounts do not exceed 15% of the issue size or are not expected to pay debt service on the issue;

(F) nonpurpose investments allocable to replacement proceeds of a refunded issue as a result of the application of the universal cap to amounts in a refunding escrow; and

(G) nonpurpose investments allocable to certain permanent funds not treated as replacement proceeds by operation of the effective date rule of Section 1.148-11(f) of the Treasury Regulations.



## EXHIBIT B

### CERTIFICATE OF UNDERWRITER

This Certificate is furnished by Goldman, Sachs & Co. (the “Underwriter”) of the \$28,005,000 California Consumer Power and Conservation Financing Authority Energy Efficiency Master Trust Revenue Bonds, Series 2003A (the “Bonds”), to establish the initial offering price of the Bonds for purposes of establishing the “issue price” of the Bonds within the meaning of Section 1273 of the Internal Revenue Code of 1986, as amended (the “Code”), and with respect to certain other matters. We hereby certify to you as follows:

#### **A. Issue Price**

1. The Underwriter reasonably expected on March 27, 2003, which is the date on which the Underwriter entered into a binding written obligation to purchase the Bonds (the “Sale Date”), that the Bonds would be sold for cash to the “general public” (i.e., the general public of investors who are purchasing for their own account as ultimate purchasers without a view to resell, excluding bond houses, brokers and similar persons or organizations acting in the capacity of underwriters or wholesalers).

2. The Underwriter has made a bona fide offering of all of the Bonds to the general public at prices equal to or less than the initial offering prices set forth in the Official Statement, dated March 27, 2003, relating to the Bonds (the “Initial Public Offering Prices”), and reasonably expected all of the Bonds to be sold to the general public, for cash, at prices equal to or less than their Initial Public Offering Price. The aggregate Issue Price of the Bonds expressed as a dollar amount, equal to the sum of all dollar prices determined by applying their Initial Public Offering Prices, is \$29,315,685.10 (representing \$28,005,000.00 aggregate principal amount of the Bonds, plus net original issue premium of \$1,310,685.10), plus Accrued Interest of \$27,126.90 for a total of \$29,342,812.00.

3. The Underwriter first sold for cash at least 10 percent of the aggregate principal amount of each maturity of the Bonds to the general public at prices not in excess of their respective Initial Public Offering Prices.

4. The Initial Public Offering Price for each maturity of the Bonds is not more than the fair market value of such maturity as of the Sale Date.

#### **B. No Early Redemption**

The Bonds are not subject to redemption prior to this stated maturity.

#### **C. Yield on the Bonds**

We have calculated the arbitrage yield on the Bonds to be 3.2322%, in accordance with Section 148 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.



#### **D. Reserve Fund**

Based on our experience with respect to issues of tax-exempt bonds similar to the Bonds and our knowledge of such financings in general, the funding of the Debt Service Reserve Account in the amount of the Debt Service Reserve Requirement for the Bonds, namely \$6,000,000.00, provides a source of security that facilitates the marketing of the Bonds at the interest rates provided thereon, which rates are comparable to those of bond issues of a similar character. Accordingly, the funding of the Debt Service Reserve Account in such amount is a vital factor in marketing the Bonds and is not in excess of the amount necessary for such purpose.

#### **E. Average Maturity**

We have calculated the average maturity of the Bonds, based on the respective initial public offering price of each maturity of the Bonds, and using the delivery date of the Bonds as the beginning of the term of each maturity and a 30-day month/360-day year convention. On that basis we have determined the average maturity of the Bonds to be 5.0009 years.

#### **F. Reliance and Disclaimers**

We understand that the foregoing information will be relied upon by the Authority and the Energy Commission with respect to the representations contained in Sections 3.2(C), 5.3(A) and (B) and 6.2(D) of the Tax Agreement and by Sidley Austin Brown & Wood LLP, as Bond Counsel, in connection with its opinion as to the exclusion of the interest on the Bonds from gross income for federal income tax purposes under Section 103 of the Code.

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All terms not defined herein have the meanings ascribed to those terms in the attached Tax Agreement.

Dated: April 10, 2003

GOLDMAN, SACHS & CO.

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EXHIBIT C

FORM 8038-G

Please see Item Number 10 of the transcript relating to the Bonds.



EXHIBIT D

FORM OF BORROWERS' TAX CERTIFICATE

**LOAN NUMBER:** \_\_\_\_\_  
**REVENUE BOND SERIES:** \_\_\_\_\_  
**REVENUE BOND ISSUANCE DATE:** \_\_\_\_\_

In connection with the issuance by the California Consumer Power and Conservation Financing Authority (the "Authority"), or other issuer authorized by law, of its Energy Efficiency Master Trust Revenue Bonds, (the "Bonds"), a portion of the proceeds of which will be used to fund, in whole or in part, a loan to the undersigned borrower (the "Borrower"), under the Loan Agreement (the "Loan"), from the California Energy Commission (the "Commission"), to finance the acquisition and/or construction of a capital project of the Borrower (the "Project"), the Borrower hereby certifies, with respect to proceeds of the Loan drawn by the Borrower, as follows:

1. Use of Proceeds and Project. During the period in which the Loan is outstanding, the Borrower shall not (1) sell or otherwise dispose of the Project or any portion thereof to an entity that is not a governmental unit (for this purpose "governmental unit" shall mean only a state or local governmental unit), (2) enter into a lease of the Project or any portion thereof, regardless of type or duration, with an entity other than a governmental unit, (3) enter into a management or service contract with respect to the Project or any portion thereof with an entity other than a governmental unit, unless such management or service contract complies with the requirements of Revenue Procedure 97-13, 1997-1 C.B. 632, as amended by Revenue Procedure 2001-39, 2001-28, I.R.B. 38 (collectively, "Revenue Procedure 97-13"), (4) otherwise enter into any other arrangement with respect to the Project or any portion thereof that gives rise to a "private business use," within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"), of the Project or any portion thereof, or (5) make any other use of the proceeds of the Loan that gives rise to a "private business use" of the proceeds of the Loan or any portion thereof. The Borrower shall notify the Commission of any of the aforementioned transactions within five business days of the date on which the Borrower enters into an agreement to effect such transaction. In the case of a sale or disposition of the Project or any portion thereof by the Borrower to a governmental unit, such sale or disposition shall obligate the Borrower to require said governmental unit to assume all covenants and responsibilities in this section. In the event the Borrower sells or disposes of the Project or any portion thereof to a Governmental Unit, the Borrower shall, upon such sale or disposition, repay the Loan or portion thereof allocable to the Project or portion thereof, as the case may be, and shall apply any proceeds it derives from the sale of the Project or portion thereof, as the case may be, to such repayment. Such amount shall be due and payable to the Commission within thirty (30) calendar days of receiving an invoice from the Commission for the balance due. As of the date hereof, (a) no portion of the Project is subject to a lease with a person that is not a governmental unit, and (b) no portion of the Project is subject to a management or service contract, with an entity other than a governmental unit, that does not comply with Revenue Procedure 97-13.



2. No Further Loans. The Borrower shall not allocate any portion of the proceeds of the Loan to the financing of a loan by the Borrower to another entity.
3. No Payment of Debt. The Borrower shall not use any portion of the proceeds of the Loan to pay the principal of or interest on any outstanding indebtedness of the Borrower.
4. Expenses Paid in Reimbursement Only. All proceeds of the Loan drawn by the Borrower shall be used solely to reimburse the Borrower for costs of the Project paid by the Borrower (a) in anticipation of receiving such proceeds, (b) prior to the date of requisition for such draw, and (c) after the date of approval of the Commission resolution authorizing payment from proceeds of the Bonds or the Energy Conservation Assistance Account.
5. Capital Expenditures Only. The Borrower shall allocate the proceeds of the Loan solely to costs of the Project that constitute capital expenditures (which may include, among other things, “soft costs” that are properly capitalizable into the cost of the Project). No expenditures to which proceeds of the Loan will be allocated by the Borrower will be operating or working capital expenditures.
6. Economic Life of Project. The Project has a reasonably expected economic that is at least equal to the term of the Loan.
7. No Replacement of Other Moneys. No portion of the proceeds of the Loan is being used as a substitute for other moneys that (a) would have been used to finance the Project to which proceeds of the Loan are being allocated if proceeds of the Bonds were not used to fund the Loan, and (b) have been or will be used to acquire, directly or indirectly, securities or obligations or other investment property.
8. Payment of Loan Debt Service. Payments of debt service on the Loan shall be made directly by the Borrower and, except as provided in the next sentence, the Borrower shall not set aside any moneys for such purpose in advance of such payments. The Borrower may, if it chooses to do so, set aside moneys in a fund or account in advance of a debt service payment date, but only where the Borrower makes such set-aside no more than one year prior to the time such money will be needed, such that any moneys so set aside, together with investment earnings thereon, will be used within one year of such set-aside to pay debt service on the Loan. Any fund or account so established for such purpose will be depleted no less frequently than annually. The Borrower shall make no other set-aside, nor establish any other fund or account, that is reasonably expected to pay debt service on the Loan or that is otherwise pledged as collateral for the Loan so as to create a reasonable assurance that amounts represented by such set-aside, or in such fund or account, would be available to pay debt service on the Loan in the event the Borrower were to encounter financial difficulties. Nothing in this Section is intended to affect the requirement that the Borrower make payments of debt service on the Loan from certain energy-related savings.



9. No Federal Guarantee. The Borrower shall not enter into any arrangement with respect to the Project or any portion thereof obligating the United States or any agency or instrumentality thereof to make payments of any kind to the Borrower.
10. No Purchase of Bonds. The Borrower shall not purchase any of the Bonds, on the open market or otherwise.

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BORROWER

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FEDERAL EMPLOYER IDENTIFICATION  
NUMBER

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PRINTED NAME OF AUTHORIZED  
REPRESENTATIVE

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AUTHORIZED SIGNATURE

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TITLE

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DATE